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The Gift of Friends

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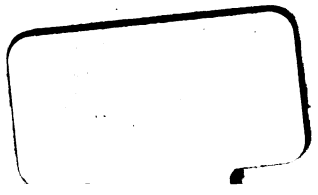


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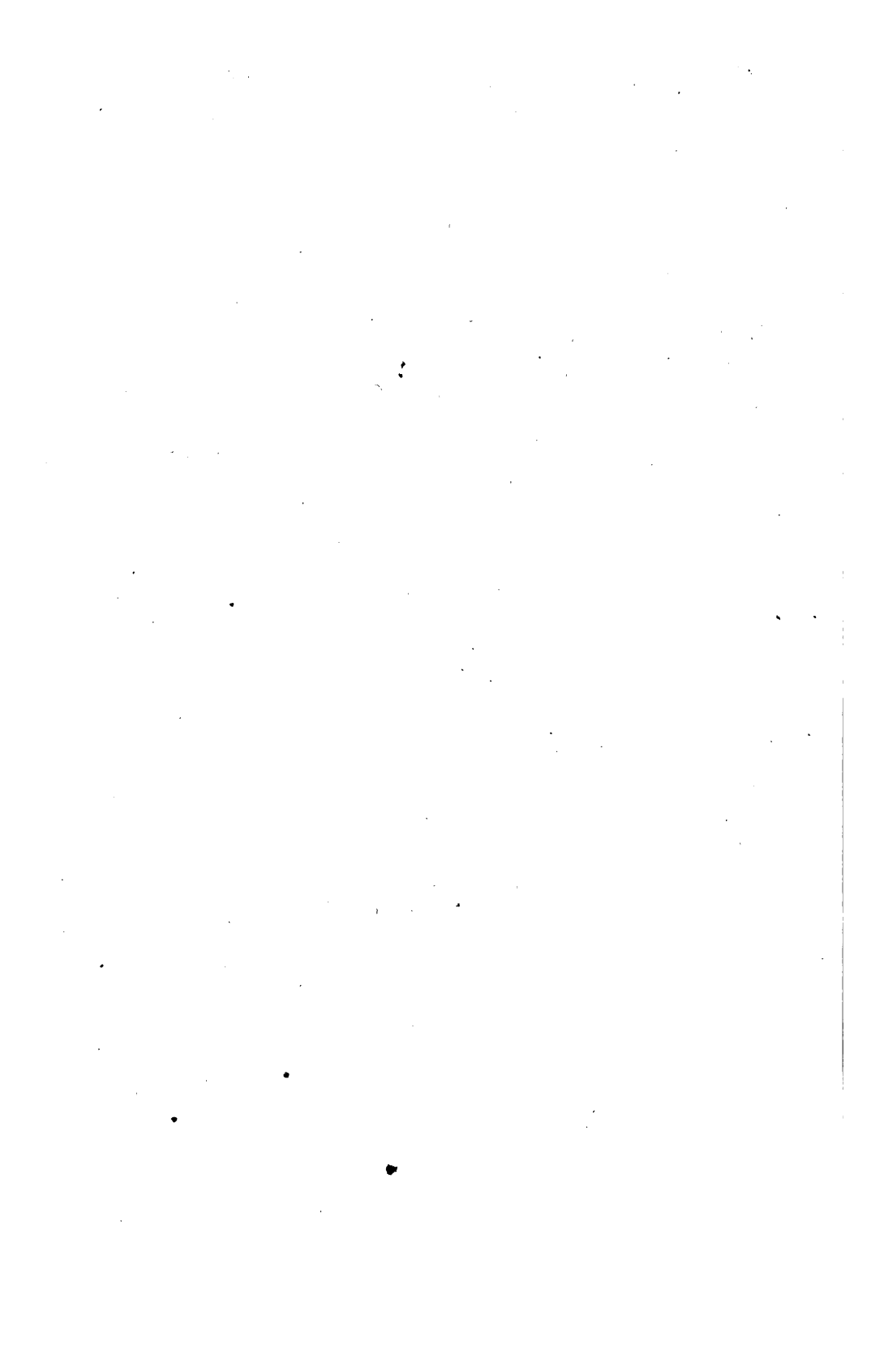






**THE PROTECTION OF  
NEUTRAL RIGHTS AT SEA  
DOCUMENTS ON THE NAVAL WARFARE**

**PRICE 25 CENTS**



THE PROTECTION OF  
NEUTRAL RIGHTS AT SEA

*Documents on the Naval Warfare*

WITH AN INTRODUCTION BY  
WILLIAM R. SHEPHERD  
Professor of History in Columbia University

New York  
STURGIS & WALTON  
COMPANY

1915



## INTRODUCTION

to trade with other neutrals, and even with belligerents, in noncontraband articles is a fundamental principle of the freedom of the seas which cannot, and should not, be bought off with money.

Great Britain has an enormous number of merchantmen available to bring it all the supplies it needs. Germany has no desire to sacrifice its "supermarine" fleet by a conflict with the far more powerful British navy. Accordingly it uses its submarines to destroy, not only belligerent warships, but belligerent merchantmen, and even neutral vessels of the latter sort if they are known to carry contraband.

On behalf of this new mode of warfare it is asserted that, because of the special nature of the submarines, they cannot observe the rules of international law which apply solely to the kind of warships in existence at the time such rules were formulated. If belligerent merchantmen, consequently, were unarmed, and were they neither to hoist neutral flags, nor to attempt escape, nor to resist visit and search, nor to summon aid by wireless, those rules could be heeded, so far at least as the safety of human life is concerned.

Compliance with these conditions, however, might be more than human nature under the circumstances would be disposed to yield. Nor would it meet the clear regulation of international law which provides for an assurance of the safety of the passengers and crew of a merchantman before the vessel is destroyed. This too is a fundamental principle of the freedom of the seas which cannot, and should not be, satisfied by expressions of regret for its non-observance. Just to what extent the undoubted right of neutrals to travel on a belligerent merchantman, having contraband on board, confers the privilege also of involving their government in grave complications on their account, is a question no easier to answer than the one that concerns the extent to which such a government is bound to protect the property of its citizens in areas controlled by belligerents.

The force of circumstances in general and the plea of military necessity in particular, at all events, appear to make it imperative that Great Britain should prohibit neutrals to trade with Germany, denying them the plain right to do so and even depriving them of their property through the losses incident to seizure and detention. Similar reasons appear to make it equally imperative that Germany should prohibit trade with Great Britain in vessels belonging to that country or its allies, or in neutral ships if they carry contraband, even at the risk to human life arising from the destruction of the vessels affected.

Under the tremendous pressure of contending interests in which the very existence of the warring nations may hang in the balance, each of the two great belligerents has accused the other of committing illegal and inhuman acts, and each has adopted measures of reprisal accordingly. In the belief that it is invoking the supreme law of self-preservation, each has felt itself compelled to set aside an international law that aims to uphold the rights of neutrals as equal, if not superior, to the claims of belligerents.

Two vital interests, those of Great Britain and Germany, are in deadly conflict and they threaten to draw a third one, that of the United States as the representative of neutral nations, into their toils. In all fairness it is quite as absurd to suppose that Great Britain is deliberately violating the rights of neutrals for the mere sake of doing so, as it is to assume that Germany is wilfully destroying the lives of non-combatants for the sheer pleasure of it. The serious

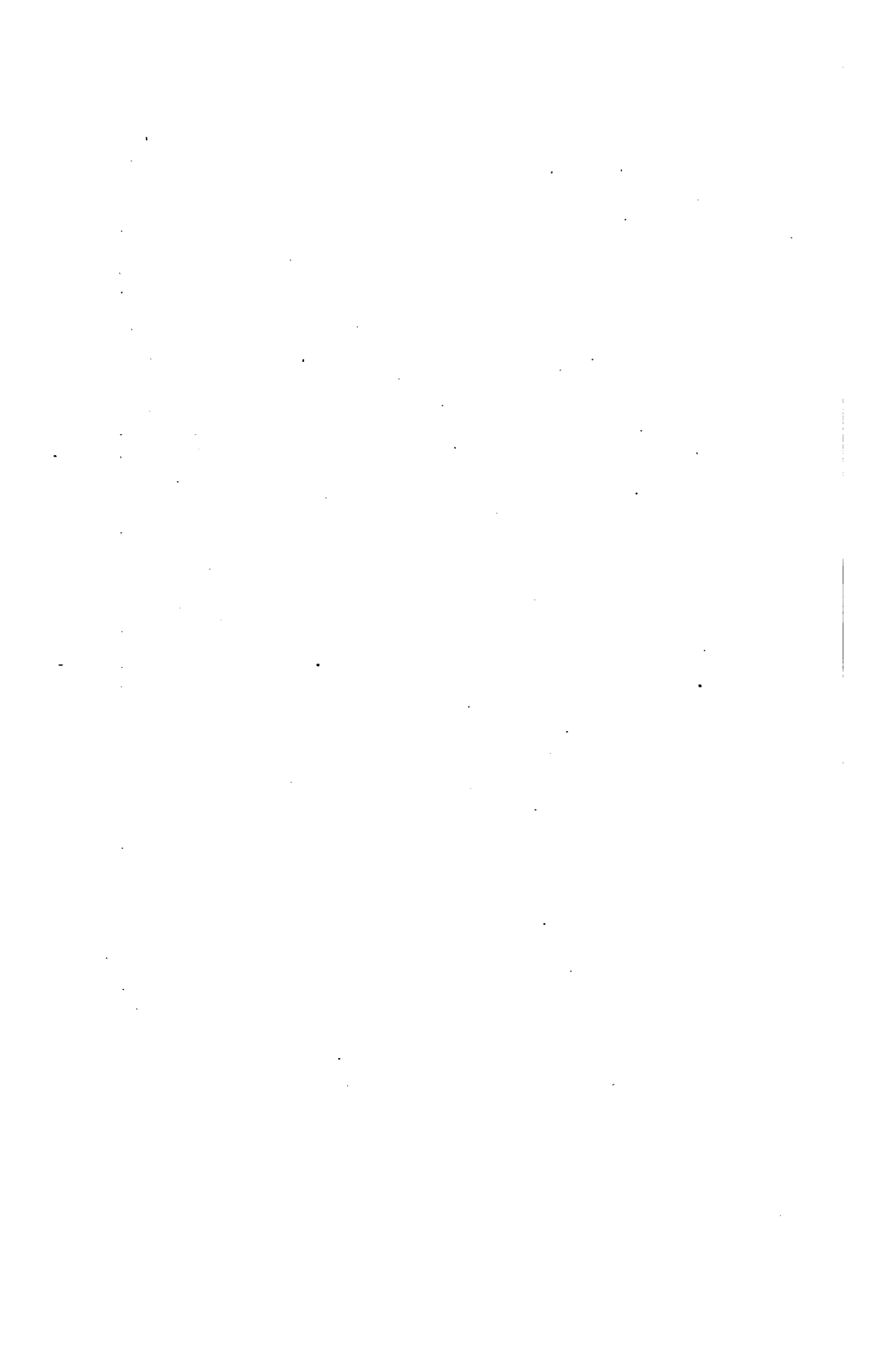
## INTRODUCTION

difficulty that confronts our own country is the extent to which it can treat the actions of one belligerent with due regard to the actions of the other.

Yet whatever the situation of the powers at war, neutrals ought not to be sacrificed for the benefit of belligerents. If the disputants choose to settle their differences by fighting, that is no reason why the outsider should be forced to suffer for their misdeeds or mistakes or misfortunes. If it be pleaded that belligerents have as much title to consideration as neutrals, the answer is that the whole trend of international agreement in modern times has been moving toward an effective recognition of the rights of nations that remain at peace over against the claims of nations that see fit to war.

Mindful of these truths the United States, early in the course of the struggle, proposed to the belligerents that they adopt the Declaration of London as a temporary code of naval warfare (No. 1). This suggestion it withdrew on learning that Great Britain insisted upon modifications of that code which were quite at variance with it (No. 4). Then, after Great Britain had declared the North Sea a military area, for the purpose of shutting out direct commerce with Germany (No. 8), and Germany had retaliated by declaring the waters around Great Britain a war zone, with a similar object in view (No. 14), the United States proposed the adoption of certain mutual concessions which would soften the rigors of warfare and uphold the rights of neutrals (No. 26). This proposal Germany accepted in substance (No. 27) and Great Britain answered, not only by rejection (No. 32), but by virtually prohibiting neutral trade with Germany altogether (Nos. 28 and 34). The protest of the United States against such a prohibition (No. 36) remained unheeded for nearly four months (No. 61). Finally, in the notes following the German attacks on the *Gulflight*, the *Cushing* and the *Lusitania* (Nos. 46, 50, 51, 53, 56 and 60), wherein the United States protests against the loss of innocent lives, the idea of mutual concession appears once more with this country as its sponsor. Whether it will find favor at the hands of both belligerents is yet to be determined.

Reading these documents in their wider relationship to the European struggle, another fact is evident—the fact that never has the United States been afforded so wondrous an opportunity to champion the rights of neutral nations. To this end, if individual protests continue unavailing, it should arrange for the meeting under its auspices of a congress of such nations, to draw up a statement of the principles that justice demands should be observed by the nations at war. Wisely framed, that statement might utter a word of moral power that would resound above the roar of cannon and musketry. The congress, also, if its work did not indeed hasten the end of the war, could contribute in no small degree to the eventual triumph of neutral rights over belligerent claims, and thus put a milestone on the pathway of progress toward universal peace.



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# THE PROTECTION OF NEUTRAL RIGHTS AT SEA

## The Declaration of London: Chapter II — Contraband of War.\*

### CONTRABAND OF WAR

#### Article 22

The following articles may, without notice, be treated as contraband of war, under the name of absolute contraband:—

(1) Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.

(2) Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.

(3) Powder and explosives especially prepared for use in war.

(4) Gun-mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.

(5) Clothing and equipment of a distinctively military character.

(6) All kinds of harness of a distinctively military character.

(7) Saddle, draught, and pack animals suitable for use in war.

(8) Articles of camp equipment, and their distinctive component parts.

(9) Armour plates.

(10) War-ships, including boats, and their distinctive component parts of such a nature that they can only be used on a vessel of war.

(11) Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land or sea.

#### Article 23

Articles exclusively used for war may be added to the list of absolute contraband by a declaration, which must be notified.

Such notification must be addressed to the Governments of other Powers, or to their representatives accredited to the Power making the declaration. A notification made after the outbreak of hostilities is addressed only to neutral Powers.

\* At the Naval Conference called together by Great Britain at London the Declaration was signed, February 26, 1909, by all of the Powers represented: seven of the present belligerents, viz., Great Britain, France, Russia, Japan, Italy, Germany and Austria-Hungary, and three of the neutral nations, viz., the United States, Spain and Holland. Later, chiefly because of British opposition to the articles defining contraband of war, it failed of ratification. Lawrence, *Documents Illustrative of International Law*, 351 note.



## 2 THE PROTECTION OF NEUTRAL RIGHTS AT SEA

### *Article 24*

The following articles, susceptible of use in war as well as for purposes of peace, may, without notice, be treated as contraband of war, under the name of conditional contraband:—

- (1) Foodstuffs.
- (2) Forage and grain, suitable for feeding animals.
- (3) Clothing, fabrics for clothing, and boots and shoes, suitable for use in war.
- (4) Gold and silver in coin or bullion; paper money.
- (5) Vehicles of all kinds available for use in war, and their component parts.
- (6) Vessels, craft, and boats of all kinds; floating docks, parts of docks and their component parts.
- (7) Railway material, both fixed and rolling-stock, and material for telegraphs, wireless telegraphs, and telephones.
- (8) Balloons and flying machines and their distinctive component parts, together with accessories and articles recognisable as intended for use in connection with balloons and flying machines.
- (9) Fuel; lubricants.
- (10) Powder and explosives not specially prepared for use in war.
- (11) Barbed wire and implements for fixing and cutting the same.
- (12) Horseshoes and shoeing materials.
- (13) Harness and saddlery.
- (14) Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

### *Article 25*

Articles susceptible of use in war as well as for purposes of peace, other than those enumerated in Articles 22 and 24, may be added to the list of conditional contraband by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

### *Article 26*

If a Power waives, so far as it is concerned, the right to treat as contraband of war an article comprised in any of the classes enumerated in Articles 22 and 24, such intention shall be announced by a declaration, which must be notified in the manner provided for in the second paragraph of Article 23.

### *Article 27*

Articles which are not susceptible of use in war may not be declared contraband of war.

### *Article 28*

The following may not be declared contraband of war:—

- (1) Raw cotton, wool, silk, jute, flax, hemp, and other raw materials of the textile industries, and yarns of the same.
- (2) Oil seeds and nuts; copra.
- (3) Rubber, resins, gums, and laces; hops.
- (4) Raw hides and horns, bones, and ivory.

- (5) Natural and artificial manures, including nitrates and phosphates for agricultural purposes.
- (6) Metallic ores.
- (7) Earths, clays, lime, chalk, stone, including marble, bricks, slates, and tiles.
- (8) Chinaware and glass.
- (9) Paper and paper-making materials.
- (10) Soap, paint and colours, including articles exclusively used in their manufacture, and varnish.
- (11) Bleaching powder, soda ash, caustic soda, salt cake, ammonia, sulphate of ammonia, and sulphate of copper.
- (12) Agricultural, mining, textile, and printing machinery.
- (13) Precious and semi-precious stones, pearls, mother-of-pearl, and coral.
- (14) Clocks and watches, other than chronometers.
- (15) Fashion and fancy goods.
- (16) Feathers of all kinds, hairs, and bristles.
- (17) Articles of household furniture and decoration; office furniture and requisites.

*Article 29*

Likewise the following may not be treated as contraband of war:—

- (1) Articles serving exclusively to aid the sick and wounded. They can, however, in case of urgent military necessity and subject to the payment of compensation, be requisitioned, if their destination is that specified in Article 30.
- (2) Articles intended for the use of the vessel in which they are found, as well as those intended for the use of her crew and passengers during the voyage.

*Article 30*

Absolute contraband is liable to capture if it is shown to be destined to territory belonging to or occupied by the enemy, or to the armed forces of the enemy. It is immaterial whether the carriage of the goods is direct or entails transshipment or a subsequent transport by land.

*Article 31*

Proof of the destination specified in Article 30 is complete in the following cases:—

- (1) When the goods are documented for discharge in an enemy port, or for delivery to the armed forces of the enemy.
- (2) When the vessel is to call at enemy ports only, or when she is to touch at an enemy port or meet the armed forces of the enemy before reaching the neutral port for which the goods in question are documented.

*Article 32*

When a vessel is carrying absolute contraband, her papers are conclusive proof as to the voyage on which she is engaged, unless she is found clearly out of the course indicated by her papers and unable to give adequate reasons to justify such deviation.

## 4 THE PROTECTION OF NEUTRAL RIGHTS AT SEA

### *Article 33*

Conditional contraband is liable to capture if it is shown to be destined for the use of the armed forces or of a government department of the enemy State, unless in this latter case the circumstances show that the goods cannot in fact be used for the purposes of war in progress. This latter exception does not apply to a consignment coming under Article 24 (4).

### *Article 34*

The destination referred to in Article 33 is presumed to exist if the goods are consigned to enemy authorities, or to a contractor established in the enemy country who, as a matter of common knowledge, supplies articles of this kind to the enemy. A similar presumption arises if the goods are consigned to a fortified place belonging to the enemy, or other place serving as a base for the armed forces of the enemy. No such presumption, however, arises in the case of a merchant vessel bound for one of these places if it is sought to prove that she herself is contraband.

In cases where the above presumptions do not arise, the destination is presumed to be innocent.

The presumptions set up by this Article may be rebutted.

### *Article 35*

Conditional contraband is not liable to capture, except when found on board a vessel bound for territory belonging to or occupied by the enemy, or for the armed forces of the enemy, and when it is not to be discharged in an intervening neutral port.

The ship's papers are conclusive proof both as to the voyage on which the vessel is engaged and as to the port of discharge of the goods, unless she is found clearly out of the course indicated by her papers, and unable to give adequate reasons to justify such deviation.

### *Article 36*

Notwithstanding the provisions of Article 35, conditional contraband, if shown to have the destination referred to in Article 33, is liable to capture in cases where the enemy country has no seaboard.

### *Article 37*

A vessel carrying goods liable to capture as absolute or conditional contraband may be captured on the high seas or in the territorial waters of the belligerents throughout the whole of her voyage, even if she is to touch at a port of call before reaching the hostile destination.

### *Article 38*

A vessel may not be captured on the ground that she has carried contraband on a previous occasion if such carriage is in point of fact at an end.

### *Article 39*

Contraband goods are liable to condemnation.

*Article 40*

A vessel carrying contraband may be condemned if the contraband, reckoned either by value, weight, volume, or freight, forms more than half the cargo.

*Article 41*

If a vessel carrying contraband is released, she may be condemned to pay the costs and expenses incurred by the captor in respect of the proceedings in the national prize court and the custody of the ship and cargo during the proceedings.

*Article 42*

Goods which belong to the owner of the contraband and are on board the same vessel are liable to condemnation.

*Article 43*

If a vessel is encountered at sea while unaware of the outbreak of hostilities or of the declaration of contraband which applies to her cargo, the contraband cannot be condemned except on payment of compensation; the vessel herself and the remainder of the cargo are not liable to condemnation or to the costs and expenses referred to in Article 41. The same rule applies if the master, after becoming aware of the outbreak of hostilities, or of the declaration of contraband, has had no opportunity of discharging the contraband.

A vessel is deemed to be aware of the existence of a state of war, or of a declaration of contraband, if she left a neutral port subsequently to the notification to the Power to which such port belongs at the outbreak of hostilities or of the declaration of contraband respectively, provided that such notification was made in sufficient time. A vessel is also deemed to be aware of the existence of a state of war if she left an enemy port after the outbreak of hostilities.

*Article 44*

A vessel which has been stopped on the ground that she is carrying contraband, and which is not liable to condemnation on account of the proportion of contraband on board, may, when the circumstances permit, be allowed to continue her voyage if the master is willing to hand over the contraband to the belligerent warship.

The delivery of the contraband must be entered by the captor on the logbook of the vessel stopped, and the master must give the captor duly certified copies of all relevant papers.

The captor is at liberty to destroy the contraband that has been handed over to him under these conditions.

(Lawrence, *Documents Illustrative of International Law*, 336-343.)

**No. 1.** American note, August 6, 1914, suggesting the adoption of the Declaration of London as a temporary code of naval warfare.\*

*The Secretary of State to the American Ambassador at London.*

Mr. Bryan instructs Mr. Page to inquire whether the British Government is willing to agree that the laws of naval warfare as laid down

\* Same to the American Embassies at Berlin, Vienna, St. Petersburg and Paris, and to the American Legation at Brussels.

## 6 THE PROTECTION OF NEUTRAL RIGHTS AT SEA

by the Declaration of London of 1909 shall be applicable to naval warfare during the present conflict in Europe: provided that the Governments with whom Great Britain is or may be at war also agree to such application. Mr. Bryan further instructs Mr. Page to state that the Government of the United States believes that an acceptance of these laws by the belligerents would prevent grave misunderstandings which may arise as to the relations between neutral powers and the belligerents. Mr. Bryan adds that it is earnestly hoped that this inquiry may receive favorable consideration.

*(Diplomatic Correspondence with Belligerent Governments relating to Neutral Rights and Commerce, 5. Issued by the Department of State, May 27, 1915.)*

**No. 2. Statement, August 22, 1914, regarding the German reply to No. 1.\***

*The American Ambassador at Berlin to the Secretary of State.*

Mr. Gerard refers to Department's August 19, 4 p. m., and says his August 20, 1 a. m., by way of Copenhagen, states that the German Government will apply the Declaration of London, provided its provisions are not disregarded by other belligerents.

*(Dip. Corr. 5.)*

**No. 3. British note, August 22, 1914, replying to No. 1.**

*The Secretary of State for Foreign Affairs ad interim to the American Ambassador.*

YOUR EXCELLENCY: On the 7th instant you were so good as to address to me a note inquiring, pursuant to instructions from the Secretary of State at Washington, whether His Majesty's Government were willing to agree that the laws of naval warfare, as laid down by the Declaration of London, 1909, should be applicable to naval warfare during the present European conflict, provided that the Governments with whom Great Britain is at war, or with whom her relations are not normal, also agree to such application.

Your Excellency added that it was the belief of your Government that the acceptance of these laws by the belligerents would prevent the possibility of grave misunderstandings as to the relations between belligerents and neutrals.

I have the honor to inform Your Excellency that His Majesty's Government, who attach great importance to the views expressed in Your Excellency's note and are animated by a keen desire to consult so far as possible the interests of neutral countries, have given this matter their most careful consideration and have pleasure in stating that they have decided to adopt generally the rules of the declaration in question, subject to certain modifications and additions which they judge indispensable to the efficient conduct of their naval operations. A detailed explanation of these additions and modifications is contained in the inclosed memorandum.

The necessary steps to carry the above decision into effect have now been taken by the issue of an order in council, of which I have the honor to inclose copies herein for Your Excellency's information and for transmission to your Government.

I may add that His Majesty's Government, in deciding to adhere to

\* The despatch of August 20 herein referred to does not appear to have been published.

the rules of the Declaration of London, subject only to the aforesaid modifications and additions, have not waited to learn the intentions of the enemy Governments, but have been actuated by a desire to terminate at the earliest moment the condition of uncertainty which has been prejudicing the interests of neutral trade.

I have, etc.,

E. A. CROWE.

(*Dip. Corr. 6.*)

**No. 4. American note, October 22, 1914, withdrawing the suggestion contained in No. 1, and defining the policy of the United States irrespective of the Declaration of London.**

*The Secretary of State ad interim to the American Ambassador at London.*

Inasmuch as the British Government consider that the conditions of the present European conflict make it impossible for them to accept without modification the Declaration of London, you are requested to inform His Majesty's Government that in the circumstances the Government of the United States feels obliged to withdraw its suggestion that the Declaration of London be adopted as a temporary code of naval warfare to be observed by belligerents and neutrals during the present war; that therefore this Government will insist that the rights and duties of the United States and its citizens in the present war be defined by the existing rules of international law and the treaties of the United States irrespective of the provisions of the Declaration of London; and that this Government reserves to itself the right to enter a protest or demand in each case in which those rights and duties so defined are violated or their free exercise interfered with by the authorities of His Britannic Majesty's Government.

LANSING.

(*Dip. Corr. 8.*)

**No. 5. American note, October 24, 1914, similar to No. 4.\***

*The Secretary of State ad interim to the American Ambassador at Berlin.*

Referring to Department's August 6, 1 P. M., and Embassy's October 22, relative to the Declaration of London, Mr. Lansing instructs Mr. Gerard to inform the German Government that the suggestion of the department to belligerents as to the adoption of declaration for sake of uniformity as to a temporary code of naval warfare during the present conflict has been withdrawn because some of the belligerents are unwilling to accept the declaration without modifications and that this Government will therefore insist that the rights and duties of the Government and citizens of the United States in the present war be defined by existing rules of international law and the treaties of the United States without regard to the provisions of the declaration and that the Government of the United States reserves to itself the right to enter a protest or demand in every case in which the rights and duties so defined are violated or their free exercise interfered with by the authorities of the belligerent governments.

(*Dip. Corr. 8.*)

\* Same to the American Embassies at Vienna, St. Petersburg and Paris, and to the American Legation at Brussels.

**No. 6. British proclamation, October 29, 1914, revising the list of contraband of war.**

Whereas, on the fourth day of August, 1914, We did issue Our Royal Proclamation specifying the articles which it was Our intention to treat as contraband of war during the war between Us and the German Emperor; and

Whereas, on the twelfth day of August, 1914, We did by Our Royal Proclamation of that date extend Our Proclamation aforementioned to the war between Us and the Emperor of Austria, King of Hungary; and

Whereas on the twenty-first day of September, 1914, We did by Our Royal Proclamation of that date make certain additions to the list of articles to be treated as contraband of war; and

Whereas it is expedient to consolidate the said lists and to make certain additions thereto:

Now, therefore, We do hereby declare, by and with the advice of Our Privy Council, that the lists of contraband contained in the schedules to Our Royal Proclamations of the fourth day of August and the twenty-first day of September aforementioned are hereby withdrawn, and that in lieu thereof during the continuance of the war or until We do give further public notice the articles enumerated in Schedule I hereto will be treated as absolute contraband, and the articles enumerated in Schedule II hereto will be treated conditional contraband.

SCHEDULE I

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
2. Projectiles, charges, and cartridges of all kinds, and their distinctive component parts.
3. Powder and explosives specially prepared for use in war.
4. Sulphuric acid.
5. Gun mountings, limber boxes, limbers, military wagons, field forges and their distinctive component parts.
6. Range-finders and their distinctive component parts.
7. Clothing and equipment of a distinctively military character.
8. Saddle, draft, and pack animals suitable for use in war.
9. All kinds of harness of a distinctively military character.
10. Articles of camp equipment and their distinctive component parts.
11. Armour plates.
12. Hæmatite iron ore and hæmatite pig iron.
13. Iron pyrites.
14. Nickel ore and nickel.
15. Ferrochrome and chrome ore.
16. Copper, unwrought.
17. Lead, pig, sheet, or pipe.
18. Aluminium.
19. Ferro-silica.
20. Barbed wire, and implements for fixing and cutting the same.
21. Warships, including boats and their distinctive component parts of such a nature that they can only be used on a vessel of war.
22. Aeroplanes, airships, balloons, and aircraft of all kinds, and

their component parts, together with accessories and articles recognizable as intended for use in connection with balloons and aircraft.

23. Motor vehicles of all kinds and their component parts.
24. Motor tires; rubber.
25. Mineral oils and motor spirit, except lubricating oils.
26. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land and sea.

SCHEDULE II

1. Foodstuffs.
2. Forage and feedings stuff for animals.
3. Clothing, fabrics for clothing, and boots and shoes suitable for use in war.
4. Gold and silver in coin or bullion; paper money.
5. Vehicles of all kinds, other than motor vehicles, available for use in war, and their component parts.
6. Vessels, craft, and boats of all kinds; floating docks, parts of docks, and their component parts.
7. Railway materials, both fixed and rolling stock, and materials for telegraphs, wireless telegraphs, and telephones.
8. Fuel, other than mineral oils. Lubricants.
9. Powder and explosives not specially prepared for use in war.
10. Sulphur.
11. Glycerine.
12. Horseshoes and shoeing materials.
13. Harness and saddlery.
14. Hides of all kinds, dry or wet; pigskins, raw or dressed; leather, undressed or dressed, suitable for saddlery, harness, or military boots.
15. Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

(*Dip. Corr. 12, 13.*)

**No. 7. British order in council, October 29, 1914, adopting the Declaration of London, exclusive of the lists of contraband and noncontraband, and inclusive of certain other modifications.**

Whereas by an Order in Council dated the 20th day of August, 1914, His Majesty was pleased to declare that during the present hostilities the Convention known as the Declaration of London should, subject to certain additions and modifications therein specified, be adopted and put in force by His Majesty's Government; and

Whereas the said additions and modifications were rendered necessary by the special conditions of the present war; and

Whereas it is desirable and possible now to re-enact the said Order in Council with amendments in order to minimize, so far as possible, the interference with innocent neutral trade occasioned by the war:

Now, therefore, His Majesty, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, as follows:

1. During the present hostilities the provisions of the Convention known as the Declaration of London shall, subject to the exclusion of the lists of contraband and noncontraband, and to the modifications hereinafter set out, be adopted and put in force by His Majesty's Government.



The modifications are as follows:

- (i) A neutral vessel, with papers indicating a neutral destination, which, notwithstanding the destination shown on the papers, proceeds to an enemy port, shall be liable to capture and condemnation if she is encountered before the end of her next voyage.
- (ii) The destination referred to in Article 33 of the said Declaration shall (in addition to the presumptions laid down in Article 34) be presumed to exist if the goods are consigned to or for an agent of the enemy State.
- (iii) Notwithstanding the provisions of Article 35 of the said Declaration, conditional contraband shall be liable to capture on board a vessel bound for a neutral port if the goods are consigned "to order," or if the ship's papers do not show who is the consignee of the goods, or if they show a consignee of the goods in territory belonging to or occupied by the enemy.
- (iv) In the cases covered by the preceding paragraph (iii) it shall lie upon the owners of the goods to prove that their destination was innocent.

2. Where it is shown to the satisfaction of one of His Majesty's Principal Secretaries of State that the enemy Government is drawing supplies for its armed forces from or through a neutral country, he may direct that in respect of ships bound for a port in that country, Article 35 of the said Declaration shall not apply. Such direction shall be notified in the *London Gazette* and shall operate until the same is withdrawn. So long as such direction is in force, a vessel which is carrying conditional contraband to a port in that country shall not be immune from capture.

3. The Order in Council of the 20th August, 1914, directing the adoption and enforcement during the present hostilities of the Convention known as the Declaration of London, subject to the additions and modifications therein specified, is hereby repealed.

4. This Order may be cited as "the Declaration of London Order in Council, No. 2, 1914."

And the Lords Commissioners of His Majesty's Treasury, the Lords Commissioners of the Admiralty, and each of His Majesty's Principal Secretaries of State, the President of the Probate, Divorce, and Admiralty Division of the High Court of Justice, all other Judges of His Majesty's Prize Courts, and all Governors, Officers, and Authorities whom it may concern, are to give the necessary directions herein as to them may respectively appertain.

(*Dip. Corr.* 13, 14.)

### No. 8. Announcement of the British Admiralty, November 2, 1914, declaring the North Sea a military area.\*

During the last week the Germans have scattered mines indiscriminately in the open sea, on the main trade route from America to Liverpool via the North of Ireland.

Peaceful merchant ships have already been blown up, with loss of life, by this agency.

The White Star Liner *Olympic* escaped disaster by pure luck and

\* Not printed in *Diplomatic Correspondence*, etc.

but for warnings given by British cruisers other British and neutral merchant and passenger vessels would have been destroyed.

These mines cannot have been laid by any German ship of war. They have been laid by some merchant vessel flying a neutral flag, which has come along the trade route as if for purpose of peaceful commerce, and, while profiting to the full by the immunity enjoyed by neutral merchant ships, has wantonly and recklessly endangered the lives of all who travel on the sea.

In these circumstances, having regard to the great interests intrusted to the British navy, to the safety of peaceful commerce on the high seas, and to the maintenance within the limits of international law of trade between neutral countries, the admiralty feels it necessary to adopt exceptional measures appropriate to the novel conditions under which this war is being waged.

It therefore gives notice that the whole of the North Sea must be considered a military area. Within this area merchant shipping of all kinds, traders of all countries, fishing craft and all other vessels will be exposed to the gravest dangers from mines it has been necessary to lay and from warships searching vigilantly by night and day for suspicious craft.

All merchant and fishing vessels of every description are hereby warned of the dangers they encounter by entering this area, except in strict accordance with admiralty directions. Every effort will be made to convey this warning to neutral countries and to vessels on the sea, but from November 5 onward the admiralty announces that all ships passing a line drawn from the northern point of the Hebrides through the Farne Islands to Iceland do so at their own peril.

Ships of all countries wishing to trade to and from Norway, the Baltic, Denmark and Holland, are advised to come, if inward bound, by the English Channel and the Strait of Dover. There they will be given sailing directions which will pass them safely, so far as Great Britain is concerned, up the east coast of England to the Farne Islands, whence a safe route will, if possible, be given to Lindesnas Lighthouse.

From this point they should turn north or south, according to their destination, keeping as near the coast as possible. The converse applies to vessels outward bound.

By strict adherence to these routes the commerce of all countries will be able to reach its destination in safety so far as Great Britain is concerned, but any straying even for a few miles from the course thus indicated may be followed by fatal consequences.

*(The New York Tribune, November 3, 1914.)*

**No. 9. German note, November 23, 1914, regarding the British and French modifications of the Declaration of London.\***

*The German Ambassador to the Secretary of State.*

According to an order in Council of August 20th, 1914, the British Government intends to act, during the present hostilities, in accordance with the provisions of the Declaration of London relative to the law of naval warfare of February 26th, 1909, subject to some additions and modifications. However, these additions and modifications are of such a nature that they obliterate the said declaration in

\* Sent also to other neutral powers. Text of American reply not yet published. Summary in *The New York Times*, November 24, 1914.

several vital points and, at the same time, encroach on the accepted rules of international law. Further modifications of great consequence are contained in the proclamation of September 21st, 1914.

First. The most vital modifications of the Declaration of London are contained in the rule concerning conditional contraband under Nos. 3 and 5 of the above-mentioned Order in Council.

Article 33 of the Declaration of London defines that there can be no question of conditional contraband except in the case where cargo is destined for the use of the administrative departments or the military forces of the hostile power. Moreover, according to Article 35 the question whether goods are conditional contraband or not can under no circumstances arise when the vessel is sailing for a neutral port.

The above provisions which are, in the main, in accordance with the accepted rules of international law and represent the outcome of the just weighing of the interests of the belligerents on the one side and of the neutral countries on the other side, are as good as annulled by the said Order in Council, for, according to its No. 3, the hostile destination of the cargo is to be presumed in every case where the consignee of the cargo is under the control of the authorities of the hostile State. This, however, means nothing else but that each and every cargo shipped to the hostile country is liable to be seized because all inhabitants of that country are under the control of the authorities. This rule is supplemented by No. 5 of the said order, which sets forth that all vessels on the voyage for neutral ports are liable to be seized for having conditional contraband on board. Thus, the rule of the continuous voyage, applicable only in the case of absolute contraband, is declared applicable also with regard to conditional contraband in contravention of Article 35 of the Declaration of London. In this manner the more lenient regulations with regard to conditional contraband, established by the Declaration of London, are simply set aside with the result that conditional contraband is virtually on the same footing as absolute contraband. In consequence the supply by neutrals of objects of conditional contraband, especially of foodstuffs, destined only for the consumption of the inhabitants of a belligerent country, which is universally considered legitimate in international law, is practically rendered illusory, whereby the interests of the belligerents as well as neutrals are violated in a manner contrary to the law of nations.

As events at the theatres of naval warfare prove, England proceeds in this respect in the most high-handed manner, even enforcing a control over supplies destined for the countries adjacent to Germany, and thereby endangering their victualing.

Second. The British Government considers itself at liberty to totally disregard the lists of absolute contraband, and of merchandise not to be declared contraband (free list) contained in articles XXII, XXIV and XXVIII of the Declaration of London. In its definition of contraband of August 5, 1914, specially upheld by No. 1 of the said Order in Council, it has declared airships and parts thereof absolute contraband, while according to No. 8 of Article XXIV of the Declaration of London, such objects can only be regarded as conditional contraband. Above all, by proclamation of September 21, 1914, it has declared rubber, hides and skins, as well as various kinds of iron ore, to be conditional contraband, although these articles are not all, or only in an indirect way, suitable for purposes of warfare,

and were therefore placed in the free list. (Article XXVIII, Nos. 3, 4 and 6.) In this manner the universally accepted principle of international law that neutral trade with objects for exclusively peaceful use must not be disturbed by the belligerents is wantonly set aside.

Third. No. 2 of the said Order in Council contains a further aggravation of the rules concerning contraband. For Article 38 of the Declaration of London, in accordance with the accepted principle of international law, permits the seizure of a vessel for carrying contraband only as long as such is on board the vessel; whereas the British Government claims the right of seizing the vessel during its entire voyage, if carriage of contraband has taken place under false shipping documents. In this manner neutral shipping with the belligerent territory is exposed to constant chicane, since vessels may be seized not only by reason of evident facts, viz., the existence of contraband on board, but also by reason of a frequently not provable affirmation with regard to their previous acts.

Fourth. By the rule established under No. 4 of the said Order in Council the right of seizure on account of blockade running is unduly extended, since according thereto knowledge of the blockade is to be assumed even in the case that, after a certain time since the notification of the blockade of an enemy port to the local authorities has elapsed, a vessel has sailed from another enemy port. By this rule, the British Government attempts, beyond the limits drawn by international law, to put the authorities of the hostile country into the service of the British naval forces, and to enforce this service by the capture of neutral vessels.

Fifth. According to an acknowledged principle of international law, confirmed by the Declaration of London, only such persons traveling on board of merchant vessels are liable to be made prisoners of war as have already incorporated in the hostile military forces. This rule is clearly established by Article 45, No. 2, in conjunction with Article 47 of the Declaration of London, and is, moreover, treated in detail in the general report of the drafting committee of the Conference of London, in the first paragraphs to notes to 45. As it is set forth in the general report, for judicial reasons as well as for practical considerations, it was agreed at the conference that persons belonging to the active military forces, exclusively, shall be liable to be made prisoners of war when travelling on neutral ships, not, however, persons who, in order to fulfil their military services, are returning to their country, as in the case of members of the reserve. Although the said Order in Council has acknowledged as binding the above-mentioned two articles, as well as the notes of the general report, the British naval forces have, nevertheless, seized on merchant vessels, sailing under the Dutch, Norwegian, or Italian flag, German subjects liable to do military service, but not yet incorporated in the military forces, and made them prisoners of war. In this manner they have not only gravely violated the established principles of international law, as expressed in the Declaration of London, but also infringed on an act of their own legislation, i.e., the said Order in Council.

According to a decree of the President of the French Republic published in the *Journal Officiel* of August 6, 1914, France has taken the same stand as Great Britain in the said Order in Council. Moreover, in the same manner as the British naval forces, the French

naval forces have captured German persons liable to do military service, on neutral vessels, notably on Dutch and Spanish vessels.

It is thus evident that the regulations issued by Great Britain and France, and even more so their respective naval forces, are disregarding in the most wanton way the provisions embodied in the Declaration of London relative to the law of naval warfare.

It is Great Britain's acknowledged aim to hit not only the military, but also the commercial power of their adversaries, by way of paralyzing neutral trade, and in pursuing this purpose they encroach in an unjustifiable manner, not only upon the legitimate commerce between the neutrals and the enemy, but also upon the commerce among the neutral countries themselves. It is true that, thus far, the Declaration of London has not been ratified. However, in its preamble it has been specially acknowledged by the delegates of all its signatory powers, including those of Great Britain and France, that, in the main, the provisions of the Declaration of London are in accordance with the generally acknowledged principles of international law, which must be considered much more serious, because in the course of former wars in which she was neutral, notably in the Russo-Japanese War, Great Britain has always protested most emphatically against violations of international law of the indicated order. (See the *British Blue Book*, Russia No. 1, 1903, correspondence respecting contraband of war, page 8, etc.)

The Imperial German government has thus far strictly observed the Declaration of London and has embodied the contents of its provisions in the German prize court regulations of September 30, 1914 (cf. *Reichsgesetzblatt*, 1914, page 275). It has not changed this attitude even in view of the flagrant violations of law committed by its adversaries.

However, The Imperial German Government must now study the question whether it will be able to continue to maintain the above attitude if the enemy powers abide by the procedure observed by them, and if the neutral powers allow such violations of the principles of neutrality to go on to the detriment of German interest.

The Imperial German Government considers it, therefore, of interest to learn which position the neutral powers intend to take toward the attitude adopted by Great Britain and France contrary to international law, and particularly whether it is their intention to take measures against the acts of violence committed on board their merchant vessels against German subjects and German property.

(*The New York Times*, November 24, 1914.)

#### No. 10. British proclamation, December 23, 1914, again revising the list of contraband of war.\*

Whereas on the 4th day of August, 1914, we did issue our royal proclamation specifying the articles which it was our intention to treat as contraband of war during the war between us and the German Emperor; and

Whereas on the 12th day of August, 1914, we did by our royal proclamation of that date extend our proclamation aforementioned to the war between us and the Emperor of Austria, King of Hungary; and

Whereas on the 21st day of September, 1914, we did by our royal

\* See No. 6.

proclamation of that date make certain additions to the list of articles to be treated as contraband of war; and

Whereas on the 29th day of October, 1914, we did by our royal proclamation of that date withdraw the said lists of contraband and substitute therefor the lists contained in the schedules to the said proclamation; and

Whereas it is expedient to make certain alterations in and additions to the said lists:

Now, therefore, we do hereby declare, by and with the advice of our Privy Council, that the lists of contraband contained in the schedules to our royal proclamation of the twenty-ninth day of October aforementioned are hereby withdrawn, and that in lieu thereof during the continuance of the war or until we do give further public notice the articles enumerated in Schedule I hereto will be treated as absolute contraband, and the articles enumerated in Schedule II hereto will be treated as conditional contraband.

SCHEDULE I

1. Arms of all kinds, including arms for sporting purposes, and their distinctive component parts.
2. Projectiles, charges, and cartridges of all kinds and their distinctive component parts.
3. Powder and explosives specially prepared for use in war.
4. Ingredients of explosives, viz., nitric acid, sulphuric acid, glycerine, acetone, calcium acetate and all other metallic acetates, sulphur, potassium nitrate, the fractions of the distillation products of coal tar between benzol and cresol, inclusive, aniline, methylaniline, dimethylaniline, ammonium perchlorate, sodium perchlorate, sodium chlorate, barium chlorate, ammonium nitrate, cyanamide, potassium chlorate, calcium nitrate, mercury.
5. Resinous products, camphor, and turpentine (oil and spirit).
6. Gun mountings, limber boxes, limbers, military wagons, field forges, and their distinctive component parts.
7. Range-finders and their distinctive component parts.
8. Clothing and equipment of a distinctively military character.
9. Saddle, draught, and pack animals suitable for use in war.
10. All kinds of harness of a distinctively military character.
11. Articles of camp equipment and their distinctive component parts.
12. Armour plates.
13. Ferro alloys, including ferro-tungsten, ferro-molybdenum, ferro-manganese, ferro-vanadium, ferro-chrome.
14. The following metals: Tungsten, molybdenum, vanadium, nickel, selenium, cobalt, hæmatite pig-iron, manganese.
15. The following ores: Wolframite, scheelite, molybdenite, manganese ore, nickel ore, chrome ore, hæmatite iron ore, zinc ore, lead ore, bauxite.
16. Aluminium, alumina, and salts of aluminium.
17. Antimony, together with the sulphides and oxides of antimony.
18. Copper, unwrought and part wrought, and copper wire.
19. Lead, pig, sheet, or pipe.
20. Barbed wire, and implements for fixing and cutting the same.
21. Warships, including boats and their distinctive component parts of such a nature that they can only be used on a vessel of war.

22. Submarine sound signaling apparatus.
23. Aëroplanes, airships, balloons, and aircraft of all kinds, and their component parts, together with accessories and articles recognizable as intended for use in connection with balloons and aircraft.
24. Motor vehicles of all kinds and their component parts.
25. Tires for motor vehicles and for cycles, together with articles or materials especially adapted for use in the manufacture or repair of tires.
26. Rubber (including raw, waste, and reclaimed rubber) and goods made wholly of rubber.
27. Iron pyrites.
28. Mineral oils and motor spirit, except lubricating oils.
29. Implements and apparatus designed exclusively for the manufacture of munitions of war, for the manufacture or repair of arms, or war material for use on land and sea.

## SCHEDULE II

1. Foodstuffs.
2. Forage and feeding stuffs for animals.
3. Clothing, fabrics for clothing, and boots and shoes suitable for use in war.
4. Gold and silver in coin or bullion; paper money.
5. Vehicles of all kinds, other than motor vehicles, available for use in war, and their component parts.
6. Vessels, craft, and boats of all kinds; floating docks, parts of docks, and their component parts.
7. Railway materials, both fixed and rolling stock, and materials for telegraphs, wireless telegraphs, and telephones.
8. Fuel, other than mineral oils. Lubricants.
9. Powder and explosives not specially prepared for use in war.
10. Horseshoes and shoeing materials.
11. Harness and saddlery.
12. Hides of all kinds, dry or wet; pigskins, raw or dressed; leather, undressed or dressed, suitable for saddlery, harness, or military boots.
13. Field glasses, telescopes, chronometers, and all kinds of nautical instruments.

(*Dip. Corr.* 15, 16.)

**No. 11. American note, December 26, 1914, in reference to the seizure and detention of American cargoes destined for neutral European ports.\***

*The Secretary of State to the American Ambassador at London.*

The present condition of American foreign trade resulting from the frequent seizures and detentions of American cargoes destined to neutral European ports has become so serious as to require a candid statement of the views of this Government in order that the British Government may be fully informed as to the attitude of the United States toward the policy which has been pursued by the British authorities during the present war.

You will, therefore, communicate the following to His Majesty's principal secretary of state for foreign affairs, but in doing so you will assure him that it is done in the most friendly spirit and in the belief

\* Delivered at London, December 28 and published three days later.

that frankness will better serve the continuance of cordial relations between the two countries than silence, which may be misconstrued into acquiescence in a course of conduct which this Government cannot but consider to be an infringement upon the rights of American citizens.

The Government of the United States has viewed with growing concern the large number of vessels laden with American goods destined to neutral ports in Europe, which have been seized on the high seas, taken into British ports and detained sometimes for weeks by the British authorities. During the early days of the war this Government assumed that the policy adopted by the British Government was due to the unexpected outbreak of hostilities and the necessity of immediate action to prevent contraband from reaching the enemy. For this reason it was not disposed to judge this policy harshly or protest it vigorously, although it was manifestly very injurious to American trade with the neutral countries of Europe. This Government, relying confidently upon the high regard which Great Britain has so often exhibited in the past for the rights of other nations, confidently awaited amendment of a course of action which denied to neutral commerce the freedom to which it was entitled by the law of nations.

This expectation seemed to be rendered the more assured by the statement of the foreign office early in November that the British Government were satisfied with guarantees offered by the Norwegian, Swedish, and Danish Governments as to nonexportation of contraband goods when consigned to named persons in the territories of those Governments, and that orders had been given to the British fleet and customs authorities to restrict interference with neutral vessels carrying such cargoes so consigned to verification of ship's papers and cargoes.

It is therefore a matter of deep regret that, though nearly five months have passed since the war began, the British Government have not materially changed their policy and do not treat less rigorously ships and cargoes passing between neutral ports in the peaceful pursuit of lawful commerce, which belligerents should protect rather than interrupt. The greater freedom from detention and seizure which was confidently expected to result from consigning shipments to definite consignees, rather than "to order," is still awaited.

It is needless to point out to His Majesty's Government, usually the champion of the freedom of the seas and the rights of trade, that peace, not war, is the normal relation between nations and that the commerce between countries which are not belligerents should not be interfered with by those at war unless such interference is manifestly an imperative necessity to protect their national safety, and then only to the extent that it is a necessity. It is with no lack of appreciation of the momentous nature of the present struggle in which Great Britain is engaged and with no selfish desire to gain undue commercial advantage that this Government is reluctantly forced to the conclusion that the present policy of His Majesty's Government toward neutral ships and cargoes exceeds the manifest necessity of a belligerent and constitutes restrictions upon the rights of American citizens on the high seas which are not justified by the rules of international law or required under the principle of self-preservation.

The Government of the United States does not intend at this time to discuss the propriety of including certain articles in the lists of



absolute and conditional contraband, which have been proclaimed by His Majesty. Open to objection as some of these seem to this Government, the chief ground of present complaint is the treatment of cargoes of both classes of articles when bound to neutral ports.

Articles listed as absolute contraband, shipped from the United States and consigned to neutral countries, have been seized and detained on the ground that the countries to which they were destined have not prohibited the exportation of such articles. Unwarranted as such detentions are, in the opinion of this Government, American exporters are further perplexed by the apparent indecision of the British authorities in applying their own rules to neutral cargoes. For example, a shipment of copper from this country to a specified consignee in Sweden was detained because, as was stated by Great Britain, Sweden had placed no embargo on copper. On the other hand, Italy not only prohibited the export of copper, but, as this Government is informed, put in force a decree that shipments to Italian consignees or "to order," which arrive in ports of Italy cannot be exported or transshipped. The only exception Italy makes is of copper which passes through that country in transit to another country. In spite of these decrees, however, the British Foreign Office has thus far declined to affirm that copper shipments consigned to Italy will not be molested on the high seas. Seizures are so numerous and delays so prolonged that exporters are afraid to send their copper to Italy, steamship lines decline to accept it, and insurers refuse to issue policies upon it. In a word, a legitimate trade is being greatly impaired through uncertainty as to the treatment which it may expect at the hands of the British authorities.

We feel that we are abundantly justified in asking for information as to the manner in which the British Government propose to carry out the policy which they have adopted, in order that we may determine the steps necessary to protect our citizens, engaged in foreign trade, in their rights and from the serious losses to which they are liable through ignorance of the hazards to which their cargoes are exposed.

In case of conditional contraband the policy of Great Britain appears to this Government to be equally unjustified by the established rules of international conduct. As evidence of this, attention is directed to the fact that a number of the American cargoes which have been seized consist of foodstuffs and other articles of common use in all countries which are admittedly relative contraband. In spite of the presumption of innocent use because destined to neutral territory, the British authorities made these seizures and detentions without, so far as we are informed, being in possession of facts which warranted a reasonable belief that the shipments had in reality a belligerent destination, as that term is used in international law. Mere suspicion is not evidence and doubts should be resolved in favor of neutral commerce, not against it. The effect upon trade in these articles between neutral nations resulting from interrupted voyages and detained cargoes is not entirely cured by reimbursement of the owners for the damages, which they have suffered, after investigation has failed to establish an enemy destination. The injury is to American commerce with neutral countries as a whole through the hazard of the enterprise and the repeated diversion of goods from established markets.

It also appears that cargoes of this character have been seized by

the British authorities because of a belief that, though not originally so intended by the shippers, they will ultimately reach the territory of the enemies of Great Britain. Yet this belief is frequently reduced to a mere fear in view of the embargoes which have been decreed by the neutral countries, to which they are destined, on the articles composing the cargoes.

That a consignment "to order" of articles listed as conditional contraband and shipped to a neutral port raises a legal presumption of enemy destination appears to be directly contrary to the doctrines previously held by Great Britain and thus stated by Lord Salisbury during the South African War:

"Foodstuffs, though having a hostile destination, can be considered as contraband of war only if they are for the enemy's forces; it is not sufficient that they are capable of being so used, it must be shown that this was in fact their destination at the time of their seizure."

With this statement as to conditional contraband the views of this Government are in entire accord, and upon this historic doctrine, consistently maintained by Great Britain when a belligerent as well as a neutral, American shippers were entitled to rely.

The Government of the United States readily admits the full right of a belligerent to visit and search on the high seas the vessels of American citizens or other neutral vessels carrying American goods and to detain them *when there is sufficient evidence to justify a belief that contraband articles are in their cargoes*; but His Majesty's Government, judging by their own experience in the past, must realize that this Government cannot without protest permit American ships or American cargoes to be taken into British ports and there detained for the purpose of searching generally for evidence of contraband, or upon presumptions created by special municipal enactments which are clearly at variance with international law and practice.

This Government believes, and earnestly hopes His Majesty's Government will come to the same belief, that a course of conduct more in conformity with the rules of international usage, which Great Britain has strongly sanctioned for many years, will in the end better serve the interests of belligerents as well as those of neutrals.

Not only is the situation a critical one to the commercial interests of the United States, but many of the great industries of this country are suffering because their products are denied long-established markets in European countries, which, though neutral, are contiguous to the nations at war. Producers and exporters, steamship and insurance companies are pressing, and not without reason, for relief from the menace to trans-Atlantic trade which is gradually but surely destroying their business and threatening them with financial disaster.

The Government of the United States, still relying upon the deep sense of justice of the British Nation, which has been so often manifested in the intercourse between the two countries during so many years of uninterrupted friendship, expresses confidently the hope that His Majesty's Government will realise the obstacles and difficulties which their present policy has placed in the way of commerce between the United States and the neutral countries of Europe, and will instruct its officials to refrain from all unnecessary interference with the freedom of trade between nations which are sufferers, though not participants, in the present conflict; and will in their treatment

of neutral ships and cargoes conform more closely to those rules governing the maritime relations between belligerents and neutrals, which have received the sanction of the civilized world, and which Great Britain has, in other wars, so strongly and successfully advocated.

In conclusion, it should be impressed upon His Majesty's Government that the present condition of American trade with the neutral European countries is such that, if it does not improve, it may arouse a feeling contrary to that which has so long existed between the American and British peoples. Already it is becoming more and more the subject of public criticism and complaint. There is an increasing belief, doubtless not entirely unjustified, that the present British policy toward American trade is responsible for the depression in certain industries which depend upon European markets. The attention of the British Government is called to this possible result of their present policy to show how widespread the effect is upon the industrial life of the United States and to emphasize the importance of removing the cause of complaint.

BRYAN.

(*Dip. Corr.* 39-41.)

**No. 12. British note, January 7, 1915, replying tentatively to No. 11.**

*The Secretary of State for Foreign Affairs to the American Ambassador.*

YOUR EXCELLENCY: I have the honor to acknowledge receipt of your note of the 28th of December.

It is being carefully examined and the points raised in it are receiving consideration, as the result of which a reply shall be addressed to Your Excellency, dealing in detail with the issues raised and the points to which the United States Government have drawn attention. This consideration and the preparation of the reply will necessarily require some time, and I therefore desire to send without further delay some preliminary observations which will, I trust, help to clear the ground and remove some misconceptions that seem to exist.

Let me say at once that we entirely recognize the most friendly spirit referred to by Your Excellency, and that we desire to reply in the same spirit and in the belief that, as Your Excellency states, frankness will best serve the continuance of cordial relations between the two countries.

His Majesty's Government cordially concur in the principle enunciated by the Government of the United States that a belligerent, in dealing with trade between neutrals, should not interfere unless such interference is necessary to protect the belligerent's national safety, and then only to the extent to which this is necessary. We shall endeavour to keep our action within the limits of this principle on the understanding that it admits our right to interfere when such interference is, not with "bona fide" trade between the United States and another neutral country, but with trade in contraband destined for the enemy's country, and we are ready, whenever our action may unintentionally exceed this principle, to make redress.

We think that much misconception exists as to the extent to which we have, in practice, interfered with trade. Your Excellency's note seems to hold His Majesty's Government responsible for the present

condition of trade with neutral countries, and it is stated that, through the action of His Majesty's Government, the products of the great industries of the United States have been denied long established markets in European countries which, though neutral, are contiguous to the seat of war. Such a result is far from being the intention of His Majesty's Government, and they would exceedingly regret that it should be due to their action. I have been unable to obtain complete or conclusive figures showing what the state of trade with these neutral countries has been recently, and I can therefore only ask that some further consideration should be given to the question whether United States trade with these neutral countries has been so seriously affected. The only figures as to the total volume of trade that I have seen are those for the exports from New York, for the month of November, 1914, and they are as follows, compared with the month of November, 1913:

*Exports from New York for November, 1913 [and] November, 1914, respectively.*

Denmark .....	\$ 558,000	\$7,101,000
Sweden .....	377,000	2,858,000
Norway .....	477,000	2,318,000
Italy .....	2,971,000	4,781,000
Holland .....	4,389,000	3,960,000

It is true that there may have been a falling off in cotton exports, as to which New York figures would be no guide, but His Majesty's Government have been most careful not to interfere with cotton, and its place on the free list has been scrupulously maintained.

We do not wish to lay too much stress upon incomplete statistics; the figures above are not put forward as conclusive; and we are prepared to examine any further evidence with regard to the state of trade with these neutral countries, which may point to a different conclusion or show that it is the action of His Majesty's Government in particular, and not the existence of a state of war and consequent diminution of purchasing power and shrinkage of trade, which is responsible for adverse effects upon trade with the neutral countries.

That the existence of a state of war on such a scale has had a very adverse effect upon certain great industries, such as cotton, is obvious; but it is submitted that this is due to the general cause of diminished purchasing power of such countries as France, Germany, and the United Kingdom, rather than to interference with trade with neutral countries. In the matter of cotton, it may be recalled that the British Government gave special assistance through the Liverpool Cotton Exchange to the renewal of transactions in the cotton trade of not only the United Kingdom but of many neutral countries.

Your Excellency's note refers in particular to the detention of copper. The figures taken from official returns for the export of copper from the United States for Italy for the months during which the war has been in progress up to the end of the first three weeks of December are as follows:

Nineteen thirteen: Fifteen million two hundred two thousand pounds. Nineteen fourteen: Thirty-six million two hundred eighty-five thousand pounds. Norway, Sweden, Denmark, and Switzerland are not shown separately for the whole period in the United States

returns but are included in the heading "Other Europe" (that is, Europe other than the United Kingdom, Russia, France, Belgium, Austria, Germany, Holland, and Italy). The corresponding figures under this heading are as follows:

Nineteen thirteen: Seven million two hundred seventy-one thousand pounds. Nineteen fourteen: Thirty-five million three hundred forty-seven thousand pounds.

With such figures the presumption is very strong that the bulk of copper consigned to these countries has recently been intended, not for their own use, but for that of a belligerent who cannot import it direct. It is therefore an imperative necessity for the safety of this country while it is at war that His Majesty's Government should do all in their power to stop such part of this import of copper as is not genuinely destined for neutral countries.

Your Excellency does not quote any particular shipment of copper to Sweden, which has been detained. There are, however, four consignments to Sweden at the present time of copper and aluminium which, though definitely consigned to Sweden, are, according to positive evidence in the possession of His Majesty's Government, definitely destined for Germany.

I cannot believe that, with such figures before them and in such cases as those just mentioned, the Government of the United States would question the propriety of the action of His Majesty's Government in taking suspected cargoes to a prize court, and we are convinced that it cannot be in accord with the wish either of the Government or of the people of the United States, to strain the international code in favour of private interests so as to prevent Great Britain from taking such legitimate means for this purpose as are in her power.

With regard to the seizure of foodstuffs to which Your Excellency refers, His Majesty's Government are prepared to admit that foodstuffs should not be detained and put into a prize court without presumption that they are intended for the armed forces of the enemy or the enemy government. We believe that this rule has been adhered to in practice hitherto, but if the United States Government have instances to the contrary, we are prepared to examine them, and it is our present intention to adhere to the rule, though we cannot give an unlimited and unconditional undertaking in view of the departure by those against whom we are fighting from hitherto accepted rules of civilization and humanity and the uncertainty as to the extent to which such rules may be violated by them in future.

From the 4th of August last to the 3d of January the number of steamships proceeding from the United States for Holland, Denmark, Norway, Sweden, and Italy has been seven hundred and seventy-three. Of these there are forty-five which have had consignments or cargoes placed in the prize court while of the ships themselves only eight have been placed in the prize court and one of these has since been released. It is, however, essential under modern conditions that where there is real ground for suspecting the presence of contraband, the vessels should be brought into port for examination: in no other way can the right of search be exercised, and but for this practice it would have to be completely abandoned. Information was received by us that special instructions had been given to ship rubber from the United States under another designation to escape notice, and such cases have occurred in several instances. Only by search in a port can such cases, when suspected, be discovered and proved. The

necessity for examination in a port may also be illustrated by a hypothetical instance, connected with cotton, which has not yet occurred. Cotton is not specifically mentioned in Your Excellency's note, but I have seen public statements made in the United States that the attitude of His Majesty's Government with regard to cotton has been ambiguous, and thereby responsible for depression in the cotton trade. There has never been any foundation for this allegation. His Majesty's Government have never put cotton on the list of contraband; they have throughout the war kept it on the free list; and, on every occasion when questioned on the point, they have stated their intention of adhering to this practice. But information has reached us that precisely because we have declared our intention of not interfering with cotton, ships carrying cotton will be specially selected to carry concealed contraband; and we have been warned that copper will be concealed in bales of cotton. Whatever suspicions we have entertained, we have not so far made these a ground for detaining any ship carrying cotton; but, should we have information giving us real reason to believe in the case of a particular ship that the bales of cotton concealed copper or other contraband, the only way to prove our case would be to examine and weigh the bales; a process that could be carried out only by bringing the vessel into a port. In such a case, or if examination justified the action of His Majesty's Government, the case shall be brought before a prize court and dealt with in the ordinary way.

That the decisions of British prize courts hitherto have not been unfavourable to neutrals is evidenced by the decision in the *Miramichi* case. This case, which was decided against the Crown, laid down that the American shipper was to be paid even when he had sold a cargo c. i. f. and when the risk of loss after the cargo had been shipped did not apply to him at all.

It has further been represented to His Majesty's Government, though this subject is not dealt with in Your Excellency's note, that our embargoes on the export of some articles, more especially rubber, have interfered with commercial interests in the United States. It is, of course, difficult for His Majesty's Government to permit the export of rubber from British Dominions to the United States at a time when rubber is essential to belligerent countries for carrying on the war, and when a new trade in exporting rubber from the United States in suspiciously large quantities to neutral countries has actually sprung up since the war. It would be impossible to permit the export of rubber from Great Britain unless the right of His Majesty's Government were admitted to submit to a prize court cargoes of rubber exported from the United States which they believe to be destined for an enemy country, and reasonable latitude of action for this purpose were conceded. But His Majesty's Government have now provisionally come to an arrangement with the rubber exporters in Great Britain which will permit of licenses being given under proper guaranties for the export of rubber to the United States.

We are confronted with the growing danger that neutral countries contiguous to the enemy will become on a scale hitherto unprecedented a base of supplies for the armed forces of our enemies and for materials for manufacturing armament. The trade figures of imports show how strong this tendency is, but we have no complaint to make of the attitude of the Governments of those countries, which so far as we are aware have not departed from proper rules of neutrality.

We endeavor in the interest of our own national safety to prevent this danger by intercepting goods really destined for the enemy without interfering with those which are "bona fide" neutral.

Since the outbreak of the war the Government of the United States have changed their previous practice and have prohibited the publication of manifests till 30 days after the departure of vessels from the United States ports. We had no "locus standi" for complaining of this change, and did not complain. But the effect of it must be to increase the difficulty of ascertaining the presence of contraband and to render necessary in the interests of our national safety the examination and detention of more ships than would have been the case if the former practice had continued.

Pending a more detailed reply, I would conclude by saying that His Majesty's Government do not desire to contest the general principles of law, on which they understand the note of the United States to be based, and desire to restrict their action solely to interferences with contraband destined for the enemy. His Majesty's Government are prepared, whenever a cargo coming from the United States is detained, to explain the case on which such detention has taken place and would gladly enter into any arrangement by which mistakes can be avoided and reparation secured promptly when any injury to the neutral owners of a ship or cargo has been improperly caused, for they are most desirous in the interest both of the United States and of other neutral countries that British action should not interfere with the normal importation and use by the neutral countries of goods from the United States.

I have, etc.,

E. GREY.

(*Dip. Corr.* 41-44.)

### No. 13. Summary of proclamation of the German Federal Council, January 25, 1915, in reference to foodstuffs.

Available supplies in the empire of wheat, rye, both unmixed and mixed with other products, also unthreshed, are seized for war. Grain company limited, and wheat, rye, oats, and barley flour are seized for the municipality or district where the products are found. Flour in transportation is to be seized for the municipality in the district of destination.

Exempted from seizure are supplies belonging to the Government's naval or military departments, municipalities, war grain company, central purchasing company, or individual amounts of flour of threshed grain not exceeding together 220 pounds.

Attached supplies may not be touched, and legal proceedings in their regard are null and void. The feeding of animals with such supplies is particularly forbidden. Owners must take the necessary steps to conserve their supplies.

Sales to the war grain company and to municipalities are allowed. Sales from one municipality to another require the consent of higher administrative authorities and must be reported to the central distributing bureau. An agriculturist may, however, give his employers nine kilos of breadstuffs per month each, and may keep sufficient seed for sowing.

The Admiralty mills are to fulfil contracts for February, 1915, and deliver flour. Dealers and private mills may sell up to half of the flour bought from January 1 to 15. Bakers may prepare three quar-

ters of the average daily consumption of January 1 to 15. The same applies to flour not seized.

Infringements are punishable with one year's imprisonment or 10,000 marks fine. Persons having, on February 1, supplies of materials mentioned, and oats, must report the amount and ownership. The supplies of seeds must be particularly given. The war grain company and the central purchasing company need not make a report. The Government and military supplies must also be reported. Bakers and mills must report how much is used from January 1 to January 15 and the changes in stores. Verification by officials is permitted.

Competent authorities will regulate the process of dispossession. An adequate price must be paid, but the stores not reported are not paid for when taken. The person dispossessed must look after the materials until the dispossessor is ready to take the same over. For this the person dispossessed obtains recompense. Attachment and dispossession apply also to straw of unthreshed grain.

The war grain company on request is bound to supply to the municipality a part of all grain allotted to the district of the latter or to transfer the title in said grain. It is also bound to take over seized flour at the request of the municipality for the latter as far as possible and to oversee the sale of the same. It is also bound, at the wish of the municipality, to keep the quantity of the grain in the district up to the amount assigned and to give it to be milled by the district mills.

The mills will grind the grain given by the war grain company and by the central purchasing company or by the municipality.

Payment for grinding is set by the Government officials. Mills may deliver the flour and their property only to the war grain company or to the municipality. The war grain company may furnish flour to the municipalities, army or navy authorities only. The price is subject to regulation by the Government officials.

Bran from such grain is to be delivered per Government orders, and price fixed for same. An imperial distribution office is established to apportion with the help of the war grain company the existing supplies until the next harvest.

A body composed of sixteen members of the Bynfesrat (*sic*) [Bundesrat, *i.e.*, Federal Council] and one member each of the German Agricultural Advisory Boards and the German National Chamber of Commerce and the Municipal Association. The municipalities must furnish to this body facts regarding their grain supplies.

Municipalities will regulate the amount used of supplies in their district, particularly the amounts given to bakers and retailers, but within the limit set by the central distributing bureau. Municipalities can also prescribe all rules and regulations for making and selling bread. Municipalities receive a bonus of ten per cent. of the value of the amount returned of the unused quantity allotted them for any stated period. These bonuses to be used for food for people. Municipalities will fix the prices for flour assigned by them.

The foregoing regulations do not apply to the grain and flour imported after January 31, 1915. Imported grain and flour may be given over by importers only to the war grain company, the central purchasing company, or the municipalities.

Cities and communities of more than 5,000 souls are to take measures for conservation of meat and arrange for the supply of preserved



meat. To this end communities may take over the ownership of swine and fix the price therefor.

(*The New York Times*, February 18, 1915.)

**No. 14. Announcement of the German Admiralty, February 4, 1915, declaring the waters around Great Britain a war zone.**

1. The waters surrounding Great Britain and Ireland including the whole English channel are hereby declared to be war zone. On and after the 18th of February, 1915, every enemy merchant ship found in the said war zone will be destroyed without its being always possible to avert the dangers threatening the crews and passengers on that account.

2. Even neutral ships are exposed to danger in the war zone as in view of the misuse of neutral flags ordered on January 31 by the British Government and of the accidents of naval war, it cannot always be avoided to strike even neutral ships in attacks that are directed at enemy ships.

3. Northward navigation around the Shetland Islands, in the eastern waters of the North Sea and in a strip of not less than 30 miles width along the Netherlands coast is in no danger.

(*Dip. Corr.* 52-53.)

**No. 15. Memorandum of the German Government, February 4, 1915, regarding the declaration of a war zone.**

Since the commencement of the present war Great Britain's conduct of commercial warfare against Germany has been a mockery of all the principles of the law of nations. While the British Government have by several orders declared that their naval forces should be guided by the stipulations of the Declaration of London, they have in reality repudiated this Declaration in the most essential points, notwithstanding the fact that their own delegates at the Maritime Conference of London acknowledged its acts as forming part of existing international law. The British Government have placed a number of articles on the contraband list which are not at all, or only very indirectly, capable of use in warfare, and consequently cannot be treated as contraband either under the Declaration of London or under the generally acknowledged rules of international law. In addition, they have in fact obliterated the distinction between absolute and conditional contraband by confiscating all articles of conditional contraband destined for Germany, whatever may be the port where these articles are to be unloaded, and without regard to whether they are destined for uses of war or peace. They have not even hesitated to violate the Declaration of Paris, since their naval forces have captured on neutral ships German property which was not contraband of war. Furthermore, they have gone further than their own orders respecting the Declaration of London and caused numerous German subjects capable of bearing arms to be taken from neutral ships and made prisoners of war. Finally, they have declared the North Sea in its whole extent to be the seat of war, thereby rendering difficult and extremely dangerous, if not impossible, all navigation on the high seas between Scotland and Norway, so that they have in a way established a blockade of neutral coasts and ports, which is contrary to the elementary principles of generally accepted international law. Clearly all these measures are part of a plan to strike not

only the German military operations but also the economic system of Germany, and in the end to deliver the whole German people to reduction by famine, by intercepting legitimate neutral commerce by methods contrary to international law.

The neutral powers have in the main acquiesced in the measures of the British Government; in particular they have not been successful in securing the release by the British Government of the German subjects and German merchandise illegally taken from their vessels. To a certain extent they have even contributed toward the execution of the measures adopted by England in defiance of the principle of the freedom of the seas by prohibiting the export and transit of goods destined for peaceable purposes in Germany, thus evidently yielding to pressure by England. The German Government have in vain called the attention of the neutral powers to the fact that Germany must seriously question whether it can any longer adhere to the stipulations of the Declaration of London, hitherto strictly observed by it, in case England continues to adhere to its practice, and the neutral powers persist in looking with indulgence upon all these violations of neutrality to the detriment of Germany. Great Britain invokes the vital interest of the British Empire which are at stake in justification of its violations of the law of nations, and the neutral powers appear to be satisfied with theoretical protests, thus actually admitting the vital interests of a belligerent as a sufficient excuse for methods of waging war of whatever description.

The time has come for Germany also to invoke such vital interests. It therefore finds itself under the necessity, to its regret, of taking military measures against England in retaliation for the practice followed by England. Just as England declared the whole North Sea between Scotland and Norway to be comprised within the seat of war, so does Germany now declare the waters surrounding Great Britain and Ireland, including the whole English Channel to be comprised within the seat of war, and will prevent by all the military means at its disposal all navigation by the enemy in those waters. To this end it will endeavor to destroy, after February 18 next, any merchant vessels of the enemy which present themselves at the seat of war above indicated, although it may not always be possible to avert the dangers which may menace persons and merchandise. Neutral powers are accordingly forewarned not to continue to entrust their crews, passengers, or merchandise to such vessels. Their attention is furthermore called to the fact that it is of urgency to recommend to their own vessels to steer clear of these waters. It is true that the German navy has received instructions to abstain from all violence against neutral vessels recognizable as such; but in view of the hazards of war, and of the misuse of the neutral flag ordered by the British Government, it will not always be possible to prevent a neutral vessel from becoming the victim of an attack intended to be directed against a vessel of the enemy. It is expressly declared that navigation in the waters north of the Shetland Islands is outside the danger zone, as well as navigation in the eastern part of the North Sea and in a zone thirty marine miles wide along the Dutch coast.

The German Government announces this measure at a time permitting enemy and neutral ships to make the necessary arrangements to reach the ports situated at the seat of war. They hope that the neutral powers will accord consideration to the vital interests of

Germany equally with those of England, and will on their part assist in keeping their subjects and their goods far from the seat of war; the more so since they likewise have a great interest in seeing the termination at an early day of the war now ravaging.

(*Dip. Corr.* 53.)

**No. 16. Statement of the British Foreign Office, February 7, 1915, regarding the use of neutral flags and the German declaration of a war zone.**

The use of a neutral flag is, with certain limitations, well established in practice as a ruse de guerre. The only effect in the case of a merchantman wearing a flag other than her national flag, is to compel the enemy to follow the ordinary obligations of naval warfare, and satisfy him as to the nationality of the vessel and the character of her cargo by examination, before capturing her and taking her into a prize court for adjudication.

The British Government has always considered the use of the British colors by foreign vessels legitimate for the purpose of escaping capture. Such practice not only involves no breach of international law, but it is specifically recognized by the law of this country in the Merchant Shipping Act of 1894.

In instructions to British Consuls in 1914 it is stated: "A ship is liable to capture if a British character is improperly assumed except for the purpose of escaping capture."

As we have in practice not objected to foreign merchant vessels using the British merchant flag as a ruse for the purpose of evading capture at sea at the hands of a belligerent, so we should maintain that in the converse case, a British merchant vessel committed no breach of international law in assuming neutral colors for a similar purpose, if she thought fit.

By the rules of international law, the customs of war, and the dictates of humanity, it is obligatory upon a belligerent to ascertain the character of the merchant vessel and cargo before capture. Germany has no right to disregard this obligation.

To destroy a ship non-combatant crew, and cargo, as Germany announced her intention of doing, is nothing less than an act of piracy of the high seas.

(*The New York Times*, February 7, 1915.)

**No. 17. British note, February 10, 1915, replying finally to the American note of December 26, 1914 (No. 11), in regard to the seizure and detention of American cargoes.\***

*The Secretary of State for Foreign Affairs to the American Ambassador.*

YOUR EXCELLENCY: Your Excellency has already received the preliminary answer, which I handed to you on the 7th January, in reply to your note of the 28th December on the subject of the seizures and detentions of American cargoes destined for neutral European ports.

Since that date I have had further opportunity of examining into the trade statistics of the United States as embodied in the customs returns, in order to see whether the belligerent action of Great Britain

\* See No. 12.

has been in any way the cause of the trade depression which Your Excellency describes as existing in the United States, and also whether the British seizures of vessels or cargoes which have been made by the British navy have inflicted any loss on American owners for which our existing machinery provides no means of redress. In setting out the results of my investigation I think it well to take the opportunity of giving a general review of the methods employed by His Majesty's Government to intercept contraband trade with the enemy, of their consistency with the admitted right of a belligerent to intercept such trade, and also of the extent to which they have endeavored to meet the representations and complaints from time to time addressed to them on behalf of the United States Government.

Toward the close of your note of the 28th December Your Excellency describes the situation produced by the action of Great Britain as a pitiful one to the commercial interests of the United States, and said that many of the great industries of the country were suffering because their products were denied long-established markets in neutral European countries contiguous to the nations at war.

It is unfortunately true that in these days, when trade and finance are cosmopolitan, any war — particularly a war of any magnitude — must result in a grievous dislocation of commerce, including that of the nations which take no part in the war. Your Excellency will realize that in this tremendous struggle, for the outbreak of which Great Britain is in no way responsible, it is impossible for the trade of any country to escape all injury and loss, but for such His Majesty's Government are not to blame.

I do not understand the paragraph which I have quoted from Your Excellency's note as referring to these indirect consequences of the state of war, but to the more proximate and direct effect of our belligerent action in dealing with neutral ships and cargoes on the high seas. Such action has been limited to vessels on their way to enemy ports or ports in neutral countries adjacent to the theatre of war, because it is only through such ports that the enemy introduces the supplies which he requires for carrying on the war.

In my earlier note I set out the number of ships which had sailed from the United States for Holland, Denmark, Norway, Sweden, and Italy, and I there stated that only 8 of the 773 had been placed in the prize court, and that only 45 had been temporarily detained to enable particular consignments of cargo to be discharged for the purpose of prize-court proceedings. To measure the effect of such naval action it is necessary to take into consideration the general statistics of the export trade of the United States during the months preceding the outbreak of war and those since the outbreak.

Taking the figures in millions of dollars, the exports of merchandise from the United States for the seven months of January to July, 1914, inclusive, were 1,201, as compared with 1,327 in the corresponding months of 1913, a drop of 126 millions of dollars.

For the months of August, September, October, and November, that is to say, for the four months of the war preceding the delivery of Your Excellency's note, the figures of the exports of merchandise were (again in millions of dollars) 667 as compared with 923 in the corresponding months of 1913, a drop of 256 millions of dollars.

If, however, the single article of cotton be eliminated from the

comparison, the figures show a very different result. Thus the exports of all articles of merchandise other than cotton from the United States during the first seven months of 1914 were 966 millions of dollars as against 1,127 millions in 1913, a drop of 161 millions of dollars, or 14½ per cent. On the other hand, the exports of the same articles during the months August to November amounted to 608 millions of dollars as compared with 630 millions in 1913, a drop of only 22 millions, or less than 4 per cent.

It is therefore clear that, if cotton be excluded, the effect of the war has been not to increase but practically to arrest the decline of American exports which was in progress earlier in the year. In fact, any decrease in American exports which is attributable to the war is essentially due to cotton. Cotton is an article which cannot possibly have been affected by the exercise of our belligerent rights, for, as Your Excellency is aware, it has not been declared by His Majesty's Government to be contraband of war, and the rules under which we are at present conducting our belligerent operations give us no power in the absence of a blockade to seize or interfere with it when on its way to a belligerent country in neutral ships. Consequently no cotton has been touched.

Into the causes of the decrease in the exports of cotton I do not feel that there is any need for me to enter, because, whatever may have been the cause, it is not to be found in the exercise of the belligerent rights of visit, search, and capture, or in our general right when at war to intercept the contraband trade of our enemy. Imports of cotton to the United Kingdom fell as heavily as those to other countries. No place felt the outbreak of war more acutely than the cotton districts of Lancashire, where for a time an immense number of spindles were idle. Though this condition has now to a large extent passed away, the consumption of the raw material in Great Britain was temporarily much diminished. The same is no doubt true of France.

The general result is to show convincingly that the naval operations of Great Britain are not the cause of any diminution in the volume of American exports, and that if the commerce of the United States is in the unfavourable condition which Your Excellency describes, the cause ought in fairness to be sought elsewhere than in the activities of His Majesty's naval forces.

I may add that the circular issued by the Department of Commerce at Washington on the 23rd January admits a marked improvement in the foreign trade of the United States, which we have noted with great satisfaction. The first paragraph of the circular is worth quoting verbatim:

"A marked improvement in our foreign trade is indicated by the latest reports issued by the Department of Commerce through its Bureau of Foreign and Domestic Commerce, sales of foodstuffs and certain lines of manufactures having been unusually large in November, the latest period for which detailed information is at hand. In that month exports aggregated 206,000,000 dollars, or double the total for August last, when, by reason of the outbreak of war, our foreign trade fell to the lowest level reached in many years. In December there was further improvement, the month's exports being valued at 246,000,000 dollars, compared with 233,000,000 in December, 1913, and within 4,000,000 of the high record established in December, 1912."

A better view of the situation is obtained by looking at the figures

month by month. The exports of merchandise for the last five months have been (in millions of dollars):

August .....	110
September .....	156
October .....	194
November .....	205
December .....	246

The outbreak of war produced in the United States, as it did in all neutral countries, an acute but temporary disturbance of trade. Since that time there seems to have been a steady recovery, for to-day the exports from the United States stand at a higher figure than on the same date last year.

Before passing away from the statistics of trade, and in order to demonstrate still more clearly if necessary that the naval operations of Great Britain and her allies have had no detrimental effect on the volume of trade between the United States and neutral countries, it is worth while to analyse the figures of the exports to Europe since the outbreak of hostilities. For this purpose the European countries ought to be grouped under three heads: Great Britain and those fighting with her, neutral countries, and enemy countries. It is, however, impossible for me to group the countries in this way satisfactorily, as the figures relating to the export trade of the United States with each country have not yet been published. In the preliminary statement of the export trade of the United States with foreign countries only principal countries are shown, and various countries which are tabulated separately in the more detailed monthly summary of commerce and finance are omitted. Those omitted include not only the Scandinavian countries, the exports to which are of peculiar importance in dealing with this question, but also Austria.

So far as it is possible to distribute the figures under the headings which I have indicated above (all the figures being given in thousands of dollars) the results are as follows:

Total exports to Europe from the 1st August to the 30th November, 413,995, as against 597,342 in 1913. Of these, Great Britain and her allies took 288,312, as against 316,805 in 1913. Germany and Belgium took 1,881 as against 177,136 in 1913; whereas neutral countries (among which Austria-Hungary is unavoidably included) took 123,802, as against 103,401 in 1913.

The general complaint in Your Excellency's note was that the action of Great Britain was affecting adversely the trade of the United States with neutral countries. The naval operations of Great Britain certainly do not interfere with commerce from the United States on its way to the United Kingdom and the allied countries, and yet the exports to Great Britain and her allies during those four months diminished to the extent of over 28,000,000 dollars, whereas those to neutral countries and Austria increased by over 20,000,000 dollars.

The inference may fairly be drawn from these figures, all of which are taken from the official returns published by the United States Government, that not only has the trade of the United States with the neutral countries in Europe been maintained as compared with previous years, but also that a substantial part of this trade was, in fact, trade intended for the enemy countries going through neutral ports by routes to which it was previously unaccustomed.

One of the many inconveniences to which this great war is exposing the commerce of all neutral countries is undoubtedly the serious shortage in shipping available for ocean transport, and the consequential result of excessive freights.

It cannot fairly be said that this shortage is caused by Great Britain's interference with neutral ships. At the present time there are only seven neutral vessels awaiting adjudication in the prize courts in this country, and three in those in the British dominions. As Your Excellency is aware, I have already instructed our ambassador at Washington to remind the parties who are interested in these vessels that it is open to them to apply to the court for the release of these ships on bail, and if an application of this sort is made by them it is not likely to be opposed by the Crown. There is therefore no reason why such an application should not be favourably entertained by the court, and, if acceded to, all these vessels will again be available for the carriage of commerce. Only one neutral vessel is now detained in this country in addition to those awaiting adjudication in the prize court.

Every effort has been made in cases in which it has been found necessary to institute proceedings against portions of the cargo to secure the speedy discharge of the cargo and the release of the ship, so as to enable it to resume work. Great Britain is suffering from the shortage of shipping and the rise in freights as acutely as, if not more than, other nations and His Majesty's Government have taken every step that they could consistently with their belligerent interests to increase the tonnage available for the transport of sea-borne commerce. The enemy ships which have been condemned in the prize courts in this country are being sold as rapidly as possible in order that they may become available for use; and those which have been condemned in the prize courts oversea are being brought to this country in order that they may be disposed of here, and again placed in active employment.

The difficulties have been accentuated by the unforeseen consequences of the convention which was signed at The Hague in 1907 relative to the status of enemy merchant vessels at the outbreak of war. This convention was a well-intentioned effort to diminish the losses which war must impose upon innocent persons, and provided that enemy merchant ships seized by a belligerent in whose ports they lay at the outbreak of war should not be condemned, but should merely be detained for the period of the war, unless they were liberated in the days of grace. We could come to no arrangement with the German Government for the reciprocal grant of days of grace, and the German merchant vessels lying in British ports when the war broke out have therefore been sentenced to detention in lieu of condemnation. The normal result would have been still further to reduce the volume of shipping available for the commerce of the world. To ease the situation, however, His Majesty's Government are resorting to the power of requisitioning which is given by the convention, so that these ships may again be placed in active service.

Your Excellency will see, therefore, that His Majesty's Government are doing all in their power to increase the volume of shipping available. I hope it will be realized that the detention of neutral ships by His Majesty's Government with a view to the capture of contraband trade on its way to the enemy has not contributed nearly so much to the shortage of shipping as has the destruction of neutral

vessels by submarine mines indiscriminately laid by the enemy on the high seas, many miles from the coast, in the track of merchant vessels. Up till now 25 neutral vessels have been reported as destroyed by mines on the high seas; quite apart from all questions of the breach of treaties and the destruction of life, there is far more reason for protest on the score of belligerent interference with innocent neutral trade through the mines scattered by the enemy than through the British exercise of the right of seizing contraband.

I trust that what I have said above will be sufficient to convince Your Excellency's Government that the complaints that the naval policy of Great Britain has interfered with the shipments of American products to long-established markets in neutral European countries is founded on a misconception.

In justice to the peoples of both countries, I feel that this opportunity should be taken to explain the lines on which His Majesty's Government have been acting hitherto, so as to show that the line they have followed is in no way inconsistent with the general fundamental principle of international law and to indicate the care with which they have endeavored to meet the representations which have been made by the United States Government from time to time during the war on these questions.

No one in these days will dispute the general proposition that a belligerent is entitled to capture contraband goods on their way to the enemy; that right has now become consecrated by long usage and general acquiescence. Though the right is ancient, the means of exercising it alter and develop with the changes in the methods and machinery of commerce. A century ago the difficulties of land transport rendered it impracticable for the belligerent to obtain supplies of sea-borne goods through a neighboring neutral country. Consequently the belligerent actions of his opponents neither required nor justified any interference with shipments on their way to a neutral port. This principle was recognized and acted on in the decisions in which Lord Stowell laid down the lines on which captures of such goods should be dealt with.

The advent of steam power has rendered it as easy for a belligerent to supply himself through the ports of a neutral contiguous country as through his own and has therefore rendered it impossible for his opponent to refrain from interfering with commerce intended for the enemy merely because it is on its way to a neutral port.

No better instance of the necessity of countering new devices for despatching contraband goods to an enemy by new methods of applying the fundamental principle of the right to capture such contraband can be given than the steps which the Government of the United States found it necessary to take during the American Civil War. It was at that time that the doctrine of continuous voyage was first applied to the capture of contraband, that is to say, it was then for the first time that a belligerent found himself obliged to capture contraband goods on their way to the enemy, even though at the time of capture they were en route for a neutral port from which they were intended subsequently to continue their journey. The policy then followed by the United States Government was not inconsistent with the general principles already sanctioned by international law, and met with no protest from His Majesty's Government, though it was upon British cargoes and upon British ships that the losses and the inconvenience due to this new development of the application of the



old rule of international law principally fell. The criticisms which have been directed against the steps then taken by the United States came, and come, from those who saw in the methods employed in Napoleonic times for the prevention of contraband a limitation upon the right itself, and failed to see that in Napoleonic times goods on their way to a neutral port were immune from capture, not because the immediate destination conferred a privilege, but because capture under such circumstances was unnecessary.

The facilities which the introduction of steamers and railways have given to a belligerent to introduce contraband goods through neutral ports have imposed upon his opponent the additional difficulty, when endeavouring to intercept such trade, of distinguishing between the goods which are really destined for the commerce of that neutral country and the goods which are on their way to the enemy. It is one of the many difficulties with which the United States Government found themselves confronted in the days of the Civil War, and I cannot do better than quote the words which Mr. Seward, who was then Secretary of State, used in the course of the diplomatic discussion arising out of the capture of some goods on their way to Matamoros which were believed to be for the insurgents:

“Neutrals engaged in honest trade with Matamoros must expect to experience inconvenience from the existing blockade of Brownsville and the adjacent coast of Texas. While this Government unfeignedly regrets this inconvenience, it cannot relinquish any of its belligerent rights to favour contraband trade with insurgent territory. By insisting upon those rights, however, it is sure that that necessity for their exercise at all, which must be deplored by every friendly commercial Power, will the more speedily be terminated.”

The opportunities now enjoyed by a belligerent for obtaining supplies through neutral ports are far greater than they were fifty years ago, and the geographical conditions of the present struggle lend additional assistance to the enemy in carrying out such importation. We are faced with the problem of intercepting such supplies when arranged with all the advantages that flow from elaborate organisation and unstinted expenditure. If our belligerent rights are to be maintained, it is of the first importance for us to distinguish between what is really bona fide trade intended for the neutral country concerned and the trade intended for the enemy country. Every effort is made by organizers of this trade to conceal the true destination, and if the innocent neutral trade is to be distinguished from the enemy trade it is essential that His Majesty's Government should be entitled to make, and should make, careful enquiry with regard to the destination of particular shipments of goods even at the risk of some slight delay to the parties interested. If such enquiries were not made, either the exercise of our belligerent rights would have to be abandoned, tending to the prolongation of this war and the increase of the loss and suffering which it is entailing upon the whole world, or else it would be necessary to indulge in indiscriminate captures of neutral goods and their detention throughout all the period of the resulting prize court proceedings. Under the system now adopted it has been found possible to release without delay, and consequently without appreciable loss to the parties interested, all the goods of which the destination is shown as the result of the enquiries to be innocent.

It may well be that the system of making such enquiries is to a

certain extent a new introduction, in that it has been practised to a far greater extent than in previous wars; but if it is correctly described as a new departure, it is a departure which is wholly to the advantage of neutrals, and which has been made for the purpose of relieving them so far as possible from loss and inconvenience.

There was a passage in a note which the State Department addressed to the British ambassador at Washington on the 7th November to which I think it may be well to refer:

"In the opinion of this Government, the belligerent right of visit and search requires that the search should be made on the high seas at the time of the visit, and that the conclusion of the search should rest upon the evidence found on the ship under investigation, and not upon circumstances ascertained from external sources."

The principle here enunciated appears to me to be inconsistent with the practice in these matters of the United States Government, as well as of the British Government. It certainly was not the rule upon which the United States Government acted either during the Civil War or during the Spanish-American War, nor has it ever been the practice of the British Government, nor so far as I am aware, of any other Government which has had to carry on a great naval war; as a principle I think it is impossible in modern times. The necessity for giving the belligerent captor full liberty to establish by all the evidence at his disposal the enemy destination with which the goods were shipped was recognised in all the leading decisions in the prize courts of the United States during the Civil War.

No clearer instance could be given than the reporter's statement of the case of the *Bermuda* (3 Wallace, 514):

"The final destination of the cargo in this particular voyage was left so skilfully open . . . that it was not quite easy to prove, with that certainty which American courts require, the intention, which it seemed plain must have really existed. Thus to prove it required that truth should be collated from a variety of sources, darkened and disguised; from others opened as the cause advanced, and by accident only; from coincidences undesigned, and facts that were circumstantial. Collocations and comparisons, in short, brought largely their collective force in aid of evidence that was more direct."

It is not impossible that the course of the present struggle will show the necessity for belligerent action to be taken in various ways which may at first sight be regarded as a departure from old practice. In my note of the 7th January, I dealt at some length with the question of the necessity of taking vessels into port for the purposes of carrying out an effective search, where search was necessary; to that subject I feel that I need not again recur.

The growth in the size of steamships necessitates in many cases that the vessel should go into calm water, in order that even the right of visit, as apart from the right of search, should be exercised. In modern times a steamer is capable of pursuing her voyage irrespective of the conditions of the weather. Many of the neutral merchantmen which our naval officers are called upon to visit at sea are encountered by our cruisers in places and under conditions which render the launching of a boat impossible. The conditions during winter in the North Atlantic frequently render it impracticable for days together for a naval officer to board a vessel on her way to Scandinavian countries. If a belligerent is to be denied the right of taking a neutral merchantman, met with under such conditions, into calm water in

order that the visiting officer may go aboard, the right of visit and of search would become a nullity.

The present conflict is not the first in which this necessity has arisen. As long ago as the Civil War the United States found it necessary to take vessels to United States ports in order to determine whether the circumstances justified their detention.

The same need arose during the Russo-Japanese War and also during the second Balkan War, when it sometimes happened that British vessels were made to deviate from their course and follow the cruisers to some spot where the right of visit and of search could be more conveniently carried out. In both cases this exercise of belligerent rights, although questioned at first by His Majesty's Government, was ultimately acquiesced in.

No Power in these days can afford during a great war to forego the exercise of the right of visit and search. Vessels which are apparently harmless merchantmen can be used for carrying and laying mines and even fitted to discharge torpedoes. Supplies for submarines can without difficulty be concealed under other cargo. The only protection against these risks is to visit and search thoroughly every vessel appearing in the zone of operations, and if the circumstances are such as to render it impossible to carry it out at the spot where the vessel was met with the only practicable course is to take the ship to some more convenient locality for the purpose. To do so is not to be looked upon as a new belligerent right, but as an adaptation of the existing right to the modern conditions of commerce. Like all belligerent rights, it must be exercised with due regard for neutral interests, and it would be unreasonable to expect a neutral vessel to make long deviations from her course for this purpose. It is for this reason that we have done all we can to encourage neutral merchantmen on their way to ports contiguous to the enemy country to visit some British port lying on their line of route in order that the necessary examination of the ship's papers, and, if required, of the cargo, can be made under conditions of convenience to the ship herself. The alternative would be to keep a vessel which the naval officers desired to board waiting, it might be for days together, until the weather conditions enabled the visit to be carried out at sea.

No war has yet been waged in which neutral individuals have not occasionally suffered from unjustified belligerent action; no neutral nation has experienced this fact more frequently in the past than Great Britain. The only method by which it is possible to harmonise belligerent action with the rights of neutrals is for the belligerent nation to provide some adequate machinery by which in any such case the facts can be investigated and appropriate redress can be obtained by the neutral individual. In this country such machinery is provided by the powers which are given to the prize court to deal not only with captures, but also with claims for compensation. Order V, rule 2, of the British prize court rules, provides that where a ship has been captured as prize, but has been subsequently released by the captors, or has by loss, destruction, or otherwise ceased to be detained by them, without proceedings for condemnation having been taken, any person interested in the ship (which by Order I, rule 2, includes goods) wishing to make a claim for costs and damages in respect thereof, shall issue a writ as provided by Order II. A writ so issued will initiate a proceeding, which will follow its ordinary course in the prize court.

This rule gives the prize court ample jurisdiction to deal with any claim for compensation by a neutral arising from the interference with a ship or goods by our naval forces. The best evidence that can be given of the discrimination and the moderation with which our naval officers have carried out their duties is to be found in the fact that up to this time no proceedings for the recovery of compensation have been initiated under the rule which I have quoted.

It is the common experience of every war that neutrals whose attempts to engage in suspicious trading are frustrated by a belligerent are wont to have recourse to their Government to urge that diplomatic remonstrances should be made on their behalf, and that redress should be obtained for them in this way. When an effective mode of redress is open to them in the courts of a civilized country by which they can obtain adequate satisfaction for any invasion of their rights which is contrary to the law of nations, the only course which is consistent with sound principle is that they should be referred to that mode of redress, and that no diplomatic action should be taken until their legal remedies have been exhausted, and they are in a position to show *prima facie* denial of justice.

The course adopted by His Majesty's Government during the American Civil War was in strict accordance with this principle. In spite of remonstrances from many quarters, they placed full reliance on the American prize courts to grant redress to the parties interested in cases of alleged wrongful capture by American ships of war, and put forward no claims until the opportunities for redress in those courts had been exhausted. The same course was adopted in the Spanish-American War, when all British subjects who complained of captures or detentions of their ships were referred to the prize courts for relief.

Before leaving the subject may I remind Your Excellency of the fact that at your request you are now supplied immediately by this department with particulars of every ship under American colors which is detained, and of every shipment of cargo in which an American citizen appears to be the party interested. Not only is the fact of detention notified to Your Excellency, but so far as is practicable the grounds upon which the vessel or cargo has been detained are also communicated to you; a concession which enables any United States citizen to take steps at once to protect his interests.

His Majesty's Government have also done all that lies in their power to insure rapid action when ships are reported in British ports. They realize that the ship and cargo owners may reasonably expect an immediate decision to be taken as to whether the ship may be allowed to proceed, and whether her cargo or any part of it must be discharged and put into the prize court. Realizing that the ordinary methods of interdepartmental correspondence might cause delays which could be obviated by another method of procedure, they established several months ago a special committee, on which all the departments concerned are represented. This committee sits daily, and is provided with a special clerical staff. As soon as a ship reaches port full particulars are telegraphed to London, and the case is dealt with at the next meeting of the committee, immediate steps being taken to carry out the action decided upon. By the adoption of this procedure it has been found possible to reduce to a minimum the delays to which neutral shipping is exposed by the exercise of

belligerent rights, and by the necessity, imposed by modern conditions, of examining with care the destination of contraband articles.

Particular attention is directed in Your Excellency's note to the policy we are pursuing with regard to conditional contraband, especially foodstuffs, and it is there stated that a number of American cargoes have been seized without, so far as Your Excellency's Government are informed, our being in possession of facts which warranted a reasonable belief that the shipments had in reality a belligerent destination, and in spite of the presumption of innocent use due to their being destined to neutral territory. The note does not specify any particular seizures as those which formed the basis of this complaint, and I am therefore not aware whether the passage refers to cargoes which were detained before or since the order in council of the 29th October was issued.

Your Excellency will no doubt remember that soon after the outbreak of war an order of His Majesty in council was issued under which no distinction was drawn in the application of the doctrine of continuous voyage between absolute contraband and conditional contraband, and which also imposed upon the neutral owner of contraband somewhat drastic conditions as to the burden of proof of the guilt or innocence of the shipment.

The principle that the burden of proof should always be imposed upon the captor has usually been admitted as a theory. In practice, however, it has almost always been otherwise, and any student of the prize courts decisions of the past or even of modern wars will find that goods seldom escape condemnation unless their owner was in a position to prove that their destination was innocent. An attempt was made some few years ago, in the unratified Declaration of London, to formulate some definite rules upon this subject, but time alone can show whether the rules there laid down will stand the test of modern warfare.

The rules which His Majesty's Government published in the order in council of the 20th August, 1914, were criticised by the United States Government as contrary to the generally recognised principles of international law, and as inflicting unnecessary hardship upon neutral commerce, and Your Excellency will remember the prolonged discussion which took place between us through the month of October with a view to finding some new formulæ which should enable us to restrict supplies to the enemy forces, and to prevent the supply to the enemy of materials essential for the making of munitions of war, while inflicting the minimum of injury and interference with neutral commerce. It was with this object that the order in council of the 29th October was issued, under the provisions of which a far greater measure of immunity is conferred upon neutral commerce. In that order the principle of noninterference with conditional contraband on its way to a neutral port is in large measure admitted; only in three cases is the right to seize maintained, and in all those cases the opportunity is given to the claimant of the goods to establish their innocence.

Two of those cases are where the ship's papers afford no information as to the person for whom the goods are intended. It is only reasonable that a belligerent should be entitled to regard as suspicious cases where the shippers of the goods do not choose to disclose the name of the individual who is to receive them. The third case is that of goods addressed to a person in the enemy territory. In the

peculiar circumstances of the present struggle, where the forces of the enemy comprise so large a proportion of the population, and where there is so little evidence of shipments on private as distinguished from Government account, it is most reasonable that the burden of proof should rest upon the claimant.

The most difficult questions in connection with conditional contraband arise with reference to the shipment of foodstuffs. No country has maintained more stoutly than Great Britain in modern times the principle that a belligerent should abstain from interference with the foodstuffs intended for the civil population. The circumstances of the present struggle are causing His Majesty's Government some anxiety as to whether the existing rules with regard to conditional contraband, framed as they were with the object of protecting so far as possible the supplies which were intended for the civil population, are effective for the purpose, or suitable to the conditions present. The principle which I have indicated above is one which His Majesty's Government have constantly had to uphold against the opposition of continental powers. In the absence of some certainty that the rule would be respected by both parties to this conflict, we feel great doubt whether it should be regarded as an established principle of international law.

Your Excellency will, no doubt, remember that in 1885, at the time when His Majesty's Government were discussing with the French Government this question of the right to declare foodstuffs not intended for the military forces to be contraband, and when public attention had been drawn to the matter, the Kiel Chamber of Commerce applied to the German Government for a statement of the latter's views on the subject. Prince Bismarck's answer was as follows:

"In answer to their representation of the 1st instant, I reply to the Chamber of Commerce that any disadvantage our commercial and carrying interests may suffer by the treatment of rice as contraband of war does not justify our opposing a measure which it has been thought fit to take in carrying on a foreign war. Every war is a calamity, which entails evil consequences not only on the combatants, but also on neutrals. These evils may easily be increased by the interference of a neutral power with the way in which a third carries on the war, to the disadvantage of the subjects of the interfering power, and by this means German commerce might be weighed with far heavier losses than a transitory prohibition of the rice trade in Chinese waters. *The measure in question has for its object the shortening of the war by increasing the difficulties of the enemy, and is a justifiable step in war if impartially enforced against all neutral ships.*"

His Majesty's Government are disposed to think that the same view is still maintained by the German Government.

Another circumstance which is now coming to light is that an elaborate machinery has been organized by the enemy for the supply of foodstuffs for the use of the German army from overseas. Under these circumstances it would be absurd to give any definite pledge that in cases where the supplies can be proved to be for the use of the enemy forces they should be given complete immunity by the simple expedient of despatching them to an agent in a neutral port.

The reason for drawing a distinction between foodstuffs intended

for the civil population and those for the armed forces or enemy Government disappears when the distinction between the civil population and the armed forces itself disappears.

In any country in which there exists such a tremendous organisation for war as now obtains in Germany there is no clear division between those whom the Government is responsible for feeding and those whom it is not. Experience shows that the power to requisition will be used to the fullest extent in order to make sure that the wants of the military are supplied, and however much goods may be imported for civil use it is by the military that they will be consumed if military exigencies require it, especially now that the German Government have taken control of all the foodstuffs in the country.

I do not wish to overburden this note with statistics, but in proof of my statement as to the unprecedented extent to which supplies are reaching neutral ports I should like to instance the figures of the exports of certain meat products to Denmark during the months of September and October. Denmark is a country which in normal times imports a certain quantity of such products, but exports still more. In 1913, during the above two months, the United States exports of lard to Denmark were nil, as compared with 22,652,598 pounds in the same two months of 1914. The corresponding figures with regard to bacon were: 1913, nil; 1914, 1,022,195 pounds; canned beef, 1913, nil; 1914, 151,200 pounds; pickled and cured beef, 1913, 42,901 pounds; 1914, 156,143 pounds; pickled pork, 1913, nil; 1914, 812,872 pounds.

In the same two months the United States exported to Denmark 280,176 gallons of mineral lubricating oil in 1914 as compared with 179,252 in 1913; to Norway, 335,468 gallons in 1914, as against 151,179 gallons in 1913; to Sweden, 896,193 gallons in 1914, as against 385,476 gallons in 1913.

I have already mentioned the framing of the order in council of the 20th October, and the transmission to Your Excellency of particulars of ships and cargoes seized as instances of the efforts which we have made throughout the course of this war to meet all reasonable complaints made on behalf of American citizens, and in my note of the 7th January I alluded to the decision of our prize court in the case of the *Miramichi*, as evidencing the liberal principles adopted toward neutral commerce.

I should also like to refer to the steps which we took at the beginning of the war to insure the speedy release of cargo claimed by neutrals on board enemy ships which were captured or detained at the outbreak of war. Under our prize court rules release of such goods can be obtained without the necessity of entering a claim in the prize court if the documents of title are produced to the officer representing His Majesty's Government, and the title to the goods is established to his satisfaction. It was shortly found, however, that this procedure did not provide for the case where the available evidence was so scanty that the officer representing the Crown was not justified in consenting to a release. In order, therefore, to ameliorate the situation we established a special committee, with full powers to authorise the release of goods without insisting on full evidence of title being produced. This committee dealt with the utmost expedition with a large number of claims. In the great majority of cases the goods claimed were released at once. In addition to the cases dealt with by this committee a very large amount of cargo

was released at once by the procurator general on production of documents. Claimants therefore obtained their goods without the necessity of applying to the prize court and of incurring the expense involved in retaining lawyers, and without the risk, which was in some cases a considerable one, of the goods being eventually held to be enemy property and condemned. We have reason to know that our action in this matter was highly appreciated by many American citizens.

Another instance of the efforts which His Majesty's Government have made to deal as leniently as possible with neutral interests may be found in the policy which we have followed with regard to the transfer to a neutral flag of enemy ships belonging to companies which were incorporated in the enemy country, but all of whose shareholders were neutral. The rules applied by the British and by the American prize courts have always treated the flag as conclusive in favour of the captors in spite of neutral proprietary interests (see the case of the *Pedro*, 175 U. S., 354). In several cases, however, we have consented to waive our belligerent rights to treat as enemy vessels ships belonging to companies incorporated in Germany which were subsidiary to and owned by American corporations. The only condition which we have imposed is that these vessels should take no further part in trade with the enemy country.

I have given these indications of the policy which we have followed, because I cannot help feeling that if the facts were more fully known as to the efforts which we have made to avoid inflicting any avoidable injury on neutral interests, many of the complaints which have been received by the administration in Washington, and which led to the protest which Your Excellency handed to me on the 29th December would never have been made. My hope is that when the facts which I have set out above are realised, and when it is seen that our naval operations have not diminished American trade with neutral countries, and that the lines on which we have acted are consistent with the fundamental principles of international law, it will be apparent to the Government and people of the United States that His Majesty's Government have hitherto endeavoured to exercise their belligerent rights with every possible consideration for the interests of neutrals.

It will still be our endeavour to avoid injury and loss to neutrals, but the announcement by the German Government of their intention to sink merchant vessels and their cargoes without verification of their nationality or character, and without making any provision for the safety of non-combatant crews or giving them a chance of saving their lives, has made it necessary for His Majesty's Government to consider what measures they should adopt to protect their interests. It is impossible for one belligerent to depart from rules and precedents and for the other to remain bound by them.

I have the honour, etc., etc.,

(Signed)

E. GREY.

(*Dip. Corr.* 44-52.)

**No. 18. American note, February 10, 1915, regarding the German declaration of a war zone.**

*The Secretary of State to the American Ambassador at Berlin.*

Please address a note immediately to the Imperial German Government to the following effect:



The Government of the United States, having had its attention directed to the proclamation of the German Admiralty issued on the fourth of February, that the waters surrounding Great Britain and Ireland, including the whole of the English Channel, are to be considered as comprised within the seat of war; that all enemy merchant vessels found in those waters after the eighteenth instant will be destroyed, although it may not always be possible to save crews and passengers; and that neutral vessels expose themselves to danger within this zone of war because, in view of the misuse of neutral flags said to have been ordered by the British Government on the thirty-first of January and of the contingencies of maritime warfare, it may not be possible always to exempt neutral vessels from attacks intended to strike enemy ships, feels it to be its duty to call the attention of the Imperial German Government, with sincere respect and the most friendly sentiments but very candidly and earnestly, to the very serious possibilities of the course of action apparently contemplated under that proclamation.

The Government of the United States views those possibilities with such grave concern that it feels it to be its privilege, and indeed its duty in the circumstances, to request the Imperial German Government to consider before action is taken the critical situation in respect of the relations between this country and Germany which might arise were the German naval forces, in carrying out the policy foreshadowed in the Admiralty's proclamation, to destroy any merchant vessel of the United States or cause the death of American citizens.

It is of course not necessary to remind the German Government that the sole right of a belligerent in dealing with neutral vessels on the high seas is limited to visit and search, unless a blockade is proclaimed and effectively maintained, which this Government does not understand to be proposed in this case. To declare or exercise a right to attack and destroy any vessel entering a prescribed area of the high seas without first certainly determining its belligerent nationality and the contraband character of its cargo would be an act so unprecedented in naval warfare that this Government is reluctant to believe that the Imperial Government of Germany in this case contemplates it as possible. The suspicion that enemy ships are using neutral flags improperly can create no just presumption that all ships traversing a prescribed area are subject to the same suspicion. It is to determine exactly such questions that this Government understands the right of visit and search to have been recognized.

This Government has carefully noted the explanatory statement issued by the Imperial German Government at the same time with the proclamation of the German Admiralty, and takes this occasion to remind the Imperial German Government very respectfully that the Government of the United States is open to none of the criticisms for unneutral action to which the German Government believe the governments of certain of other neutral nations have laid themselves open; that the Government of the United States has not consented to or acquiesced in any measures which may have been taken by the other belligerent nations in the present war which operate to restrain neutral trade, but has, on the contrary, taken in all such matters a position which warrants it in holding those governments responsible in the proper way for any untoward effects upon American shipping which the accepted principles of international law do not justify; and that it, therefore, regards itself as free in the present

instance to take with a clear conscience and upon accepted principles the position indicated in this note.

If the commanders of German vessels of war should act upon the presumption that the flag of the United States was not being used in good faith and should destroy on the high seas an American vessel or the lives of American citizens, it would be difficult for the Government of the United States to view the act in any other light than as an indefensible violation of neutral rights which it would be very hard indeed to reconcile with the friendly relations now so happily subsisting between the two Governments.

If such a deplorable situation should arise, the Imperial German Government can readily appreciate that the Government of the United States would be constrained to hold the Imperial German Government to a strict accountability for such acts of their naval authorities and to take any steps it might be necessary to take to safeguard American lives and property and to secure to American citizens the full enjoyment of their acknowledged rights on the high seas.

The Government of the United States, in view of these considerations, which it urges with the greatest respect and with the sincere purpose of making sure that no misunderstanding may arise and no circumstance occur that might even cloud the intercourse of the two Governments, expresses the confident hope and expectation that the Imperial German Government can and will give assurance that American citizens and their vessels will not be molested by the naval forces of Germany otherwise than by visit and search, though their vessels may be traversing the sea area delimited in the proclamation of the German Admiralty.

It is added for the information of the Imperial Government that representations have been made to His Britannic Majesty's Government in respect to the unwarranted use of the American flag for the protection of British ships. ||

BRYAN.

(*Dip. Corr.* 54-55.)

**No. 19. American memorandum, February 10, 1915, concerning the use of the American flag by British vessels.**

*The Secretary of State to the American Ambassador at London.*

The department has been advised of the Declaration of the German Admiralty on February fourth, indicating that the British Government had on January thirty-first explicitly authorized the use of neutral flags on British merchant vessels presumably for the purpose of avoiding recognition by German naval forces. The department's attention has also been directed to reports in the press that the captain of the *Lusitania*, acting upon orders or information received from the British authorities, raised the American flag as his vessel approached the British coasts, in order to escape anticipated attacks by German submarines. To-day's press reports also contain an alleged official statement of the Foreign Office defending the use of the flag of a neutral country by a belligerent vessel in order to escape capture or attack by an enemy.

Assuming that the foregoing reports are true, the Government of the United States, reserving for future consideration the legality and propriety of the deceptive use of the flag of a neutral power in any case for the purpose of avoiding capture, desires very respect-

fully to point out to His Britannic Majesty's Government the serious consequences which may result to American vessels and American citizens if this practice is continued.

The occasional use of the flag of a neutral or an enemy under the stress of immediate pursuit and to deceive an approaching enemy, which appears by the press reports to be represented as the precedent and justification used to support this action, seems to this Government a very different thing from an explicit sanction by a belligerent government for its merchant ships generally to fly the flag of a neutral power within certain portions of the high seas which are presumed to be frequented with hostile warships. The formal declaration of such a policy of general misuse of a neutral's flag jeopardizes the vessels of the neutral visiting those waters in a peculiar degree by raising the presumption that they are of belligerent nationality regardless of the flag which they may carry.

In view of the announced purpose of the German Admiralty to engage in active naval operations in certain delimited sea areas adjacent to the coasts of Great Britain and Ireland, the Government of the United States would view with anxious solicitude any general use of the flag of the United States by British vessels traversing those waters. A policy such as the one which His Majesty's Government is said to intend to adopt, would, if the declaration of the German Admiralty is put in force, it seems clear, afford no protection to British vessels, while it would be a serious and constant menace to the lives and vessels of American citizens.

The Government of the United States, therefore, trusts that His Majesty's Government will do all in their power to restrain vessels of British nationality from the deceptive use of the flag of the United States in the sea area defined in the German declaration, since such practice would greatly endanger the vessels of a friendly power navigating those waters and would even seem to impose upon the Government of Great Britain a measure of responsibility for the loss of American lives and vessels in case of an attack by a German naval force.

Please present a note to Sir Edward Grey in the sense of the foregoing and impress him with the grave concern which this Government feels in the circumstances in regard to the safety of American vessels and lives in the war zone declared by the German Admiralty.

You may add that this Government is making earnest representations to the German Government in regard to the danger to American vessels and citizens if the declaration of the German Admiralty is put into effect.

BRYAN.

(*Dip. Corr.* 55.)

**No. 20. American note, February 15, 1915, regarding the "Wilhelmina."**

*The Secretary of State to the American Ambassador at London.*

The department notes that you have been informed by the British Government that the cargo of the American steamer *Wilhelmina* has been sent to prize court, but is not yet unloaded. The Government of the United States, of course, has no intention of interfering with the proper course of judicial procedure in the British prize courts, but it deems it proper to bring to the attention of the British Gov-

ernment information which has been received in relation to the character and destination of the cargo and to point out certain considerations prompting the supposition that the seizure may not be justified.

This Government is informed that the W. L. Green Commission Company, an American corporation organized in 1891, which in the past has made extensive shipments of goods to Germany, is the sole owner of the cargo which consists entirely of foodstuffs consigned to the W. L. Green Commission Company, Hamburg, and that the Company's manager, now in Europe, has instructions to sell the cargo solely to the civilian population of Hamburg. A copy of the ship's manifest has been submitted to this Government, accompanied by a sworn statement from the Company's manager in which he represents that he was instructed to proceed to Germany to dispose of the cargo to private purchasers in that country, and not to any belligerent government nor armed forces of such government, nor to any agent of a belligerent government or of its armed forces.

According to well-established practice among nations, admitted, as this Government understands by the Government of Great Britain, the articles of which the *Wilhelmina's* cargo is said to consist, are subject to seizure as contraband only in case they are destined for the use of a belligerent government or its armed forces. The Government of the United States understands that the British authorities consider the seizure of the cargo justified on the ground that a recent order of the Federal Council of Germany, promulgated after the vessel sailed, required the delivery of imported articles to the German Government. The owners of the cargo have represented to this Government that such a position is untenable. They point out that, by a provision of the order in question as originally announced, the regulations in relation to the seizure of food products are made inapplicable to such products imported after January thirty-one, nineteen fifteen. They further represent that the only articles shipped on the *Wilhelmina* which are embraced within the terms of these regulations are wheat and bran, which constitute about fifteen per centum of the cargo as compared with eighty-five per centum consisting of meats, vegetables, and fruits. The owners also assert that the regulations contemplate the disposition of foodstuffs to individuals through municipalities; that municipalities are not agents of the Government, and that the purpose of the regulations is to conserve the supply of food products and to prevent speculation and inflation of prices to noncombatants.

The German Government has addressed a formal communication to the Government of the United States in relation to the effect of the decree issued by the German Federal Council, and this Government deems it pertinent to call to the attention of the British Government a material portion of this communication, which is as follows:

"1. The Federal Council's decision concerning the seizure of food products, which England alleges to be the cause of food products shipped to Germany being treated as contraband, bears exclusively on wheat, rye, both unmixed and mixed with other products, and also wheat, rye, oats, and barley flour.

"2. The Federal Council makes an express exception in section forty-five of the order. Section forty-five provides as follows: The stipulations of this regulation do not apply to grain or flour imported from abroad after January thirty-one.

"3. Conjunctively with that saving clause the Federal Council's

order contains a provision under which imported cereals and flours would be sold exclusively to the municipalities or certain specially designated organizations by the importers. Although that provision had for its object simply to throw imported grain and flours into such channels as supply the private consumption of civilians and, in consequence of that provision, the intent and purpose of the Federal Council's order which was to protect the civilian population from speculators and engrossers were fully met, it was nevertheless rescinded so as to leave no room for doubt.

"4. My Government is amenable to any proposition looking to control by a special American organization under the supervision of the American Consular officers and, if necessary, will itself make a proposition in that direction.

"5. The German Government further calls attention to the fact that municipalities do not form part of or belong to the Government but are self-administrative bodies, which are elected by the inhabitants of the Commune in accordance with fixed rules and therefore exclusively represent the private part of the population and act as it directs. Although those principles are generally known and obtain in the United States as well as in England itself, the German Government desired to point out the fact so as to avoid any further unnecessary delay.

"6. Hence it is absolutely assured that imported food products will be consumed by the civilian population in Germany exclusively."

It will be observed that it is stated in this communication, which appears to confirm the contentions of the cargo owners, that a part of the order of the German Federal Council relating to imported food products has now been rescinded.

This Government has received another communication from the German Government giving formal assurance to the Government of the United States that all goods imported into Germany from the United States directly or indirectly, which belong to the class of relative contraband, such as foodstuffs, will not be used by the German army or navy or by Government authorities, but will be left to the free consumption of the German civilian population, excluding all Government purveyors.

If the British authorities have not in their possession evidence, other than that presented to this Government as to the character and destination of the cargo of the *Wilhelmina*, sufficient to warrant the seizure of this cargo, the Government of the United States hopes that the British Government will release the vessel together with her cargo and allow her to proceed to her port of destination.

Please communicate with the British Government in the sense of the foregoing.

BRYAN.

(*Dip. Corr.* 81-82.)

**No. 21. German note, February 15, 1915, in reference to the proclamation of January 25 concerning foodstuffs (No. 13).**

*The German Ambassador to the Secretary of State.*

1. The Federal Council's decision concerning the seizure of food products, which England alleges to be the cause of food products shipped to Germany being treated as contraband, is exclusively on "wheat, rye, both unmixed and mixed with other products," and also "wheat, rye, oats, and barley flour."

2. The Federal Council makes an express exception in Section 45 of the order. Section 45 provides as follows: "The stipulations of this regulation do not apply to grain or flour imported from abroad after January 31."

3. Conjunctively with that saving clause, the Federal Council's order contains a provision under which imported cereals and flours could be sold exclusively to the municipalities of certain specially designated organizations by the importers. Although that provision had for its object simply to throw imported grain and flour into such channels as supply the private consumption of civilians, and, in consequence of that provision, the intent and purpose of the Federal Council's order, which was to protect the civilian population from speculators and engrossers, were fully met, it was nevertheless rescinded so as to leave no room for doubt.

4. My Government is amenable to any proposition looking to control by a special American organization under the supervision of the American Consular officers, and, if necessary, will itself make a proposition in that direction.

5. The German Government further calls attention to the fact that municipalities do not form part of or belong to the Government, but are "self-administrative bodies," which are elected by the inhabitants of the commune in accordance with fixed rules, and, therefore, exclusively represent the private part of the population and act as it directs. Although these principles are generally known and obtain in the United States, as well as in England itself, the German Government desired to point out the fact so as to avoid any further unnecessary delay.

6. Hence it is absolutely assured that imported food products will be consumed by the civilian population in Germany exclusively, and there remains no doubt upon which England can prevent the exportation of food products from America to Germany for the use of civilians.

The Imperial Government expresses the firm hope that the American Government will stand on its right in this matter.

*(The New York Times, February 18, 1915.)*

**No. 22. German statement, February 15, 1915, in regard to armed British merchantmen, the use of neutral flags and the mining of the war zone.**

*Paraphrase of a note from the German Ambassador to the Secretary of State.*

According to absolutely reliable information British merchant ships intend to oppose armed resistance to German men-of-war in the area declared as war zone by the German Admiralty.

Some of these ships were already armed with British naval guns. Now all the others are speedily being equipped in a similar way. Merchant ships have been instructed to sail in groups, and to ram German submarines, while the examination is proceeding, or should the submarines lie alongside, to throw bombs upon them, or else to attempt to overpower the examining party coming on board.

A very high premium has been offered for the destruction of the first German submarine by a British merchant vessel. Therefore, British merchant ships cannot any more be considered as undefended, so that they may be attacked by German war vessels without warn-

ing or search. The British admitted that instructions had been given to misuse neutral flags. It is almost certain that British merchant vessels will by all means try to conceal their identity. Thereby, it also becomes almost impossible to ascertain the identity of neutral ships, unless they sail in daylight under convoy, as all measures suggested by neutrals, for instance, painting of the ships, in the national colours, may be promptly imitated by British ships. The attacks to be expected by masked British merchant vessels make a search impossible, as the examining party and the submarines themselves would thereby be exposed to destruction.

Under the circumstances, the safety of neutral shipping in the war zone around the British Isles is seriously threatened. There is also an increased danger resulting from mines, as these will be laid in the war zone to a great extent. Accordingly, neutral ships are urgently warned against entering that area, while the course around Scotland will be safe.

Germany has been compelled to resort to this kind of warfare by the murderous ways of British naval warfare, which aims at the destruction of legitimate neutral trade and at the starvation of the German people. Germany will be obliged to adhere to these announced principles till England submits to the recognized rules of warfare, established by the Declarations of Paris and London, or till she is compelled to do so by the neutral powers.

*(The New York Times, February 16, 1915.)*

**No. 23. German note, February 16, 1915, replying to the American note of February 10 (No. 18), in regard to the declaration of a war zone.**

*The Minister for Foreign Affairs to the American Ambassador.*

In reference to the note of the twelfth instant, Foreign Office number twenty-two sixty, relative to the German measures respecting the theater of war in the waters surrounding England, the undersigned has the honor to reply to His Excellency the Ambassador of the United States, James W. Gerard, as follows:

The Imperial German Government have examined the communication of the Government of the United States in the same spirit of good will and friendship which seems to have prompted this communication.

The Imperial German Government are in entire accord with the Government of the United States that it is in the highest degree desirable for all parties to avoid the misunderstanding which might arise from the measures announced by the German Admiralty and to avert the intrusion of events calculated to interrupt the most friendly relations which have so happily existed between the two Governments up to this time.

On this assurance the German Government believe that they may depend on full understanding on the part of the United States, all the more because the action announced by the German Admiralty, as was dwelt upon at length in the note of the fourth instant, is in no wise directed against the legitimate trade and navigation of neutral states, but merely represents an act of self-defense which Germany's vital interests force her to take against England's method of conducting maritime war in defiance of international law, which no protest on the part of neutrals has availed to bring into accordance with the

legal status generally recognized before the outbreak of hostilities.

In order to exclude all possible doubt on this cardinal point the German Government beg to set forth once more the actual situation.

Up to now Germany has scrupulously observed the existing provisions of international law relative to maritime war. In particular she assented without delay to the proposal made by the American Government directly after the war began to ratify the Declaration of London and embodied the contents thereof without change in her prize law, even without formally binding herself in this direction. The German Government have adhered to these provisions, even where they conflicted with military interests. Our Government at the same time have permitted the supply of food by Denmark to England until the present, although they could well have prevented this traffic by means of their naval forces.

In direct opposition to this, England has not shrunk from grave violations of international law wherever she could thereby cripple Germany's peaceable trade with neutral countries. It will not be necessary for the German Government to go into great detail on this point, especially since the American note to the British Government dated December twenty-eighth, nineteen fourteen, which has been brought to their knowledge, has dealt with this point very aptly if not very exhaustively on the ground of the experiences of months.

It is conceded that the intention of all these aggressions is to cut off Germany from all supplies and thereby to deliver up to death by famine a peaceful civilian population, a procedure contrary to law of war and every dictate of humanity.

The neutrals have not been able to prevent this interception of different kinds of trade with Germany contrary to international law. It is true that the American Government have protested against England's procedure, and Germany is glad to acknowledge this, but in spite of this protest and the protests of the other neutral Governments England has not allowed herself to be dissuaded from the course originally adopted. Thus, the American ship *Wilhelmina* was recently brought into port by England, although her cargo was destined solely for the civil population of Germany and was to be used only for this purpose according to an express declaration of the German Government.

In this way the following has been created: Germany is to all intents and purposes cut off from oversea supplies with the toleration, tacit or protesting, of the neutrals regardless of whether it is a question of goods which are absolute contraband or only conditional contraband or not contraband at all, following the law generally recognized before the outbreak of the war. On the other hand England with the indulgence of neutral Governments is not only being provided with such goods as are not contraband or merely conditional contraband, namely, foodstuffs, raw material, et cetera, although these are treated by England when Germany is in question as absolute contraband, but also with goods which have been regularly and unquestionably acknowledged to be absolute contraband. The German Government believe that they are obliged to point out very particularly and with the greatest emphasis, that a trade in arms exists between American manufacturers and Germany's enemies which is estimated at many hundred million marks.

The German Government have given due recognition to the fact



that as a matter of form the exercise of rights and the toleration of wrong on the part of neutrals is limited by their pleasure alone and involves no formal breach of neutrality. The German Government have not in consequence made any charge of formal breach of neutrality. The German Government cannot, however, do otherwise, especially in the interest of absolute clearness in the relations between the two countries, than to emphasize that they, in common with the public opinion in Germany, feel themselves placed at a great disadvantage through the fact that the neutral powers have hitherto achieved no success or only an unmeaning success in their assertion of the right to trade with Germany, acknowledged to be legitimate by international law, whereas they make unlimited use of their right to tolerate trade in contraband with England and our other enemies. Conceded that it is the formal right of neutrals not to protect their legitimate trade with Germany and even to allow themselves knowingly and willingly to be induced by England to restrict such trade, it is on the other hand not less their good right, although unfortunately not exercised, to stop trade in contraband, especially the trade in arms, with Germany's enemies.

In view of this situation the German Government see themselves compelled, after six months of patience and watchful waiting, to meet England's murderous method of conducting maritime war with drastic counter measures. If England invokes the powers of famine as an ally in its struggle against Germany with the intention of leaving a civilized people the alternative of perishing in misery or submitting to the yoke of England's political and commercial will, the German Government are to-day determined to take up the gauntlet and to appeal to the same grim ally. They rely on the neutrals who have hitherto tacitly or under protest submitted to the consequences, detrimental to themselves, of England's war of famine to display not less tolerance toward Germany, even if the German measures constitute new forms of maritime war, as has hitherto been the case with the English measures.

In addition to this, the German Government are determined to suppress with all the means at their disposal the supply of war material to England and her allies and assume at the same time that it is a matter of course that the neutral Governments which have hitherto undertaken no action against the trade in arms which (*sic*) [with] Germany's enemies do not intend to oppose the forcible suppression of this trade by Germany.

Proceeding from these points of view the German Admiralty has declared the zone prescribed by it the seat of war; it will obstruct this area of maritime war by mines wherever possible and also endeavor to destroy the merchant vessels of the enemy in any other way.

It is very far indeed from the intention of the German Government, acting in obedience to these compelling circumstances, ever to destroy neutral lives and neutral property, but on the other hand they cannot be blind to the fact that dangers arise through the action to be carried out against England which menace without discrimination all trade within the area of maritime war. This applies as a matter of course to war mines, which place any ship approaching a mined area in danger, even if the limits of international law are adhered to most strictly.

The German Government believe that they are all the more justi-

fied in the hope that the neutral powers will become reconciled with this, just as they have with the serious injury caused them thus far by England's measures, because it is their will to do everything in any way compatible with the accomplishment of their purpose for the protection of neutral shipping even within the area of maritime war.

They furnish the first proof of their good will by announcing the measures intended by them at a time not less than two weeks beforehand, in order to give neutral shipping an opportunity to make the necessary arrangements to avoid the threatening danger. The safest method of doing this is to stay away from the area of maritime war. Neutral ships entering the closed waters in spite of this announcement, given so far in advance, and which seriously impairs the accomplishment of the military purpose against England, bear their own responsibility for any unfortunate accidents. The German Government on their side expressly decline all responsibility for such accidents and their consequences.

Furthermore, the German Government announced merely the destruction of enemy merchant vessels found within the area of maritime war, and not the destruction of all merchant vessels, as the American Government appear to have erroneously understood. This limitation which the German Government have imposed upon themselves impairs the military purpose, especially since the presumption will prevail, even in the case of neutral ships, that they have contraband on board, in view of the interpretation of the idea of contraband in which the English Government have indulged as regards Germany and which the German Government will accordingly apply against England.

Naturally the Imperial Government are not willing to waive the right to establish the presence of contraband in the cargoes of neutral ships and, in cases requiring it, to take any action necessary on the grounds established. Finally the German Government are prepared to accord, in conjunction with the American Government, the most earnest consideration to any measure that might be calculated to insure the safety of legitimate shipping of neutrals within the seat of war. They cannot, however, overlook the fact that all efforts in this direction are considerably hampered by two circumstances: First, by the misuse of the neutral flag by English merchant vessels, which in the meantime has probably been established beyond a doubt by the American Government likewise. Second, by the above-mentioned trade in contraband, especially war materials, by neutral merchant vessels. In regard to the latter point, the German Government ventures to hope that the American Government upon reconsideration will see their way clear to a measure of intervention in accordance with the spirit of true neutrality.

As regards the first point, the secret order of the British Admiralty has already been communicated to the American Government by Germany. It recommends English merchant vessels to use neutral flags and has in the meantime been confirmed by a statement of the British Foreign Office which refers to the municipal law of England and characterizes such action as quite unobjectionable. The English merchant marine has followed this counsel without delay, as is probably known to the American Government, from the cases of the *Lusitania* and *Laertes*. Moreover, the British Government have armed English merchant vessels and instructed them to resist by

force the German submarines. In these circumstances it is very difficult for the German submarines to recognize neutral merchant vessels as such, for even a search will not be possible in the majority of cases, since the attacks to be anticipated in the case of a disguised English ship would expose the commanders conducting a search and the boat itself to the danger of destruction.

The British Government would then be in a position to render the German measures illusory if their merchant marine persists in the misuse of neutral flags and neutral vessels are not marked in some other manner admitting of no possible doubt. Germany must, in the exigency into which she has unlawfully been forced, make her measures effective at all events in order thereby to compel her adversary to conduct maritime warfare in accordance with international law and thus to reestablish the freedom of the seas which she has ever advocated and for which she is fighting likewise to-day.

The German Government, therefore, welcomes the fact that the American Government have made representations to the British Government relative to the use of their flag contrary to law and give expression to the expectation that this action will cause England to respect the American flag in future.

In this expectation the commanders of the German submarines have been instructed, as was already stated in the note of fourth instant, to abstain from violence to American merchant vessels when they are recognizable as such.

In order to meet in the safest manner all the consequences of mistaking an American for a hostile merchant vessel the German Government recommended that (although this would not apply in the case of danger from mines) the United States convoy their ships carrying peaceable cargoes and traversing the English seat of maritime war in order to make them recognizable. In this connection the German Government believe it should be made a condition that only such ships should be convoyed as carry no merchandise which would have to be considered as contraband according to the interpretation applied by England against Germany. The German Government are prepared to enter into immediate negotiations with the American Government relative to the manner of convoy. They would, however, be particularly grateful if the American Government would urgently advise their merchant vessels to avoid the English seat of maritime war, at any rate until the flag question is settled.

The German Government resign themselves to the confident hope that the American Government will recognize the full meaning of the severe struggle which Germany is conducting for her very existence and will gain full understanding of the reasons which prompt Germany and the aims of the measures announced by her from the above explanations and promises.

The German Government repeat that in the scrupulous consideration for neutrals hitherto practiced by them they have determined upon the measures planned only under the strongest compulsion of national self-preservation. Should the American Government at the eleventh hour succeed in removing, by virtue of the weight which they have the right and ability to throw into the scales of the fate of peoples, the reasons which have made it the imperative duty of the German Government to take the action indicated, should the American Government in particular find a way to bring about the observation of the Declaration of London on the part of the Powers

at war with Germany and thereby to render possible for Germany the legitimate supply of foodstuffs and industrial raw materials, the German Government would recognize this as a service which could not be too highly estimated in favor of more humane conduct of war and would gladly draw the necessary conclusions from the new situation thus created.

The undersigned requests the Ambassador to bring the above to the attention of the American Government and avails himself of the opportunity to renew, et cetera.

VON JAGOW.

(*Dip. Corr.* 56-59.)

**No. 24. British memorandum, February 19, 1915, concerning the use of the American flag by British vessels.\***

*The Secretary of State for Foreign Affairs to the American Ambassador.*

The memorandum communicated on the 11th February calls attention in courteous and friendly terms to the action of the captain of the British S. S. *Lusitania* in raising the flag of the United States of America when approaching British waters and says that the Government of the United States feel a certain anxiety in considering the possibility of any general use of the flag of the United States by British vessels traversing those waters since the effect of such a policy might be to bring about a menace to the lives and vessels of United States citizens.

It was understood that the German Government had announced their intention of sinking British merchant vessels at sight by torpedoes without giving any opportunity of making any provision for saving the lives of noncombatant crews and passengers. It was in consequence of this threat that the *Lusitania* raised the United States flag on her inward voyage and on her subsequent outward voyage. A request was made by the United States passengers who were embarking on board her that the United States flag should be hoisted presumably to insure their safety. Meanwhile the memorandum from Your Excellency had been received. His Majesty's Government did not give any advice to the company as to how to meet this request and it is understood that the *Lusitania* left Liverpool under the British flag.

It seems unnecessary to say more as regards the *Lusitania* in particular regard to the use of foreign flags by merchant vessels. The British merchant shipping act makes it clear that the use of the British flag by foreign merchant vessels is permitted in time of war for the purpose of escaping capture. It is believed that in the case of some other nations there is a similar recognition of the same practice with regard to their flags and that none have forbidden it. It would therefore be unreasonable to expect His Majesty's Government to pass legislation forbidding the use of foreign flags by British merchant vessels to avoid capture by the enemy. Now that the German Government have announced their intention to sink merchant vessels at sight with their noncombatant crews, cargoes, and papers, a proceeding hitherto regarded by the opinion of the world not as war, but as piracy, it is felt that the United States Government could not fairly ask the British Government to order British merchant vessels to

\* See No. 19.

forego the means — always hitherto permitted — of escaping not only capture but the much worse fate of sinking and destruction. Great Britain has always when neutral accorded to the vessels of other States at war liberty to use the British flag as a means of protection against capture, and instances are on record when United States vessels availed themselves of this facility during the American Civil War. It would be contrary to fair expectation if now when the conditions are reversed the United States and neutral nations were to grudge to British ships liberty to take similar action. The British Government have no intention of advising their merchant shipping to use foreign flags as general practice or to resort to them otherwise than for escaping capture or destruction.

The obligation upon a belligerent warship to ascertain definitely for itself the nationality and character of a merchant vessel before capturing it and "a fortiori" before sinking and destroying it has been universally recognized. If that obligation is fulfilled, hoisting a neutral flag on board a British vessel cannot possibly endanger neutral shipping and the British Government hold that if loss to neutrals is caused by disregard of this obligation it is upon the enemy vessel disregarding it and upon the Government giving orders that it should be disregarded that the sole responsibility for injury to neutrals ought to rest.

(*Dip. Corr.* 59.)

**No. 25. British memorandum, February 19, 1915, regarding the "Wilhelmina."\***

*The Secretary of State for Foreign Affairs to the American Ambassador.*

The communication made by the United States Ambassador in his note to Sir Edward Grey of the sixteenth instant has been carefully considered and the following observations are offered in reply:—

2. At the time when His Majesty's Government gave directions for the seizure of the cargo of the steamship *Wilhelmina* as contraband they had before them the text of the decree made by the German Federal Council on the twenty-fifth January, under Article forty-five of which all grain and flour imported into Germany after the thirty-first January was declared deliverable only to certain organizations under direct government control or to municipal authorities. The vessel was bound for Hamburg, one of the free cities of the German Empire, the government of which is vested in the municipality. This was one of the reasons actuating His Majesty's Government in deciding to bring the cargo of the *Wilhelmina* before the prize court.

3. Information has only now reached them that by a subsequent decree, dated the sixth February, the above provision in Article forty-five of the previous decree was repealed, it would appear for the express purpose of rendering difficult the anticipated proceedings against the *Wilhelmina*. The repeal was not known to His Majesty's Government at the time of detention of the cargo, or indeed, until now.

4. How far the ostensible exception of imported supplies from the general Government monopoly of all grain and flour set up by the German Government may affect the question of the contraband nature

\* See No. 20.

of the shipment seized is a matter which will most suitably be investigated by the prize court.

5. It is, however, necessary to state that the German decree is not the only ground on which the submission of the cargo of the *Wilhelmina* to a prize court is justified. The German Government have in public announcements claimed to treat practically every town or port on the English East coast as a fortified place and base of operations. On the strength of this contention they have subjected to bombardment the open towns of Yarmouth, Scarborough, and Whitby, among others. On the same ground, a number of neutral vessels sailing for English ports on the east coast with cargoes of goods on the German list of conditional contraband have been seized by German cruisers and brought before the German prize court. Again, the Dutch vessel *Maria*, having sailed from California with a cargo of grain consigned to Dublin and Belfast, was sunk in September last by the German cruiser *Karlsruhe*. This could only have been justified if, among other things, the cargo could have been proved to be destined for the British Government or armed forces and if a presumption to this effect had been established owing to Dublin or Belfast being considered a fortified place or a base for the armed forces.

6. The German Government cannot have it both ways. If they consider themselves justified in destroying by bombardment the lives and property of peaceful civil inhabitants of English open towns and watering places, and in seizing and sinking ships and cargoes of conditional contraband on the way thither, on the ground that they were consigned to a fortified place or base, "a fortiori" His Majesty's Government must be at liberty to treat Hamburg, which is in part protected by the fortifications at the mouth of the Elbe, as a fortified town, and a base of operations and supply for the purposes of Article thirty-four of the Declaration of London. If the owners of the cargo of the *Wilhelmina* desire to question the validity in international law of the action taken by order of His Majesty's Government they will have every opportunity of establishing their case in due course before the prize court, and His Majesty's Government would, in this connection, recall the attention of the United States Government to the considerations put forward in Sir Edward Grey's note to Mr. Page of the tenth instant as to the propriety of awaiting the result of prize court proceedings before diplomatic action is initiated. It will be remembered that they have from the outset given a definite assurance that the owners of the *Wilhelmina*, as well as the owners of her cargo, if found to be contraband would be equitably indemnified.

7. There is one further observation to which His Majesty's Government think it right, and appropriate in the present connection, to give expression. They have not, so far, declared foodstuffs to be absolute contraband. They have not interfered with any neutral vessels on account of their carrying foodstuffs, except on the basis of such foodstuffs being liable to capture if destined for the enemy forces or governments. In so acting they have been guided by the general principle, of late universally upheld by civilized nations, and observed in practice, that the civil populations of countries at war are not to be exposed to the treatment rightly reserved for combatants. This distinction has to all intents and purposes been swept away by the novel doctrines proclaimed and acted upon by the German Government:

8. It is unnecessary here to dwell upon the treatment that has been meted out to the civil population of Belgium, and those parts of France which are in German occupation. When Germany, long before any mines had been laid by British authorities, proceeded to sow mines upon the high seas, and, by this means, sunk a considerable number not only of British but also of neutral merchantmen with their unoffending crews, it was, so His Majesty's Government held, open to them to take retaliatory measures, even if such measures were of a kind to involve pressure of the civil population — not indeed of neutral states — but of their enemies. They refrained from doing so.

9. When, subsequently, English towns and defenseless British subjects, including women and children, were deliberately and systematically fired upon and killed by ships flying the flag of the Imperial German navy, when quiet country towns and villages, void of defenses, and possessing no military or naval importance, were bombarded by German airships, His Majesty's Government still abstained from drawing the logical consequences from this form of attack on defenseless citizens. Further steps in the same direction are now announced, and in fact have already been taken, by Germany. British merchant vessels have been torpedoed at sight without any attempt being made to give warning to the crew, or any opportunity being given to save their lives, a torpedo has been fired against a British hospital ship in daylight, and similar treatment is threatened to all British merchant vessels in future as well as to any neutral ships that may happen to be found in the neighborhood of the British Isles.

10. Faced with this situation, His Majesty's Government consider it would be altogether unreasonable that Great Britain and her allies should be expected to remain indefinitely bound, to their grave detriment, by rules and principles of which they recognize the justice if impartially observed as between belligerents, but which are at the present moment openly set at defiance by their enemy.

11. If, therefore, His Majesty's Government should hereafter feel constrained to declare foodstuffs absolute contraband, or to take other measures for interfering with German trade, by way of reprisals, they confidently expect that such action will not be challenged on the part of neutral states by appeals to laws and usages of war whose validity rests on their forming an integral part of that system of international doctrine which as a whole their enemy frankly boasts the liberty and intention to disregard, so long as such neutral states cannot compel the German Government to abandon methods of warfare which have not in recent history been regarded as having the sanction of either law or humanity.

(*Dip. Corr.* 82-83.)

**No. 26. American note, February 20, 1915; proposing mutual concessions in the conduct of naval warfare.**

*The Secretary of State to the American Ambassador at London.\**

You will please deliver to Sir Edward Grey the following identic note which we are sending England and Germany:

In view of the correspondence which has passed between this Government and Great Britain and Germany respectively, relative to the Declaration of a war zone by the German Admiralty and the use of neutral flags by British merchant vessels, this Government

\* Same to the American Ambassador at Berlin.

ventures to express the hope that the two belligerent Governments may, through reciprocal concessions, find a basis for agreement which will relieve neutral ships engaged in peaceful commerce from the great dangers which they will incur in the high seas adjacent to the coasts of the belligerents.

The Government of the United States respectfully suggests that an agreement in terms like the following might be entered into. This suggestion is not to be regarded as in any sense a proposal made by this Government, for it of course fully recognizes that it is not its privilege to propose terms of agreement between Great Britain and Germany, even though the matter be one in which it and the people of the United States are directly and deeply interested. It is merely venturing to take the liberty which it hopes may be accorded a sincere friend desirous of embarrassing neither nation involved and of serving, if it may, the common interests of humanity. The course outlined is offered in the hope that it may draw forth the views and elicit the suggestions of the British and German Governments on a matter of capital interest to the whole world.

Germany and Great Britain to agree:

1. That neither will sow any floating mines, whether upon the high seas or in territorial waters; that neither will plant on the high seas anchored mines except within cannon range of harbors for defensive purposes only; and that all mines shall bear the stamp of the Government planting them and be so constructed as to become harmless if separated from their moorings.

2. That neither will use submarines to attack merchant vessels of any nationality except to enforce the right of visit and search.

3. That each will require their respective merchant vessels not to use neutral flags for the purpose of *disguise or ruse de guerre*.

Germany to agree:

That all importations of food or foodstuffs from the United States (and from such other neutral countries as may ask it) into Germany shall be consigned to agencies to be designated by the United States Government; that these American agencies shall have entire charge and control without interference on the part of the German Government, of the receipt and distribution of such importations, and shall distribute them solely to retail dealers bearing licenses from the German Government entitling them to receive and furnish such food and foodstuffs to noncombatants only; that any violation of the terms of the retailers' licenses shall work a forfeiture of their rights to receive such food and foodstuffs for this purpose; and that such food and foodstuffs will not be requisitioned by the German Government for any purpose whatsoever or be diverted to the use of the armed forces of Germany.

Great Britain to agree:

That food and foodstuffs will not be placed upon the absolute contraband list and that shipments of such commodities will not be interfered with or detained by British authorities if consigned to agencies designated by the United States Government in Germany for the receipt and distribution of such cargoes to licensed German retailers for distribution solely to the noncombatant population.

In submitting this proposed basis of agreement this Government does not wish to be understood as admitting or denying any belligerent or neutral right established by the principles of international law, but would consider the agreement, if acceptable to the interested



powers, a *modus vivendi* based upon expediency rather than legal right and as not binding upon the United States either in its present form or in a modified form until accepted by this Government.

BRYAN.

(*Dip. Corr.* 59-60.)

No. 27. German note, February 28, 1915, accepting in substance the American proposal of February 20 (No. 26).

*The Minister for Foreign Affairs to the American Ambassador.*

The undersigned has the honor to inform His Excellency, Mr. James W. Gerard, Ambassador of the United States of America, in reply to the note of the 22d instant that the Imperial German Government have taken note with great interest of the suggestion of the American Government that certain principles for the conduct of maritime war on the part of Germany and England be agreed upon for the protection of neutral shipping. They see therein new evidence of the friendly feelings of the American Government toward the German Government which are fully reciprocated by Germany.

It is in accordance with Germany's wishes also to have maritime war conducted according to rules which without discriminately restricting one or the other of the belligerent powers in the use of their means of warfare are equally considerate of the interests of neutrals and the dictates of humanity. Consequently it was intimated in the German note of the 16th instant that observation of the Declaration of London on the part of Germany's adversaries would create a new situation from which the German Government would gladly draw the proper conclusions.

Proceeding from this view, the German Government have carefully examined the suggestion of the American Government and believe that they can actually see in it a suitable basis for the practical solution of the questions which have arisen.

With regard to the various points of the American note they beg to make the following remarks:

1. With regard to the sowing of mines, the German Government would be willing to agree as suggested not to use floating mines and to have anchored mines constructed as indicated. Moreover, they agree to put the stamp of the Government on all mines to be planted. On the other hand, it does not appear to them to be feasible for the belligerents wholly to forego the use of anchored mines for offensive purposes.

2. The German Government would undertake not to use their submarines to attack mercantile of any flag except when necessary to enforce the right of visit and search. Should the enemy nationality of the vessel or the presence of contraband be ascertained submarine would proceed in accordance with the general rules of international law.

3. As provided in the American note, this restriction of the use of the submarines is contingent on the fact that enemy mercantile abstain from the use of the neutral flag and other neutral distinctive marks. It would appear to be a matter of course that such mercantile also abstain from arming themselves and from all resistance by force, since such procedure contrary to international law would render impossible any action of the submarines in accordance with international law.

4. The regulation of legitimate importations of food into Ger-

many suggested by the American Government appears to be in general acceptable. Such regulation would, of course, be confined to importations by sea, but that would on the other hand include indirect importations by way of neutral ports. The German Government would, therefore, be willing to make the declarations of the nature provided in the American note so that the use of the imported food and foodstuffs solely by the noncombatant population would be guaranteed. The Imperial Government must, however, in addition (. . .)\* having the importation of other raw material used by the economic system of noncombatants including forage permitted. To that end the enemy Governments would have to permit the free entry into Germany of the raw materials mentioned in the free list of the Declaration of London and to treat materials included in the list of conditional contraband according to the same principles as food and foodstuffs.

The German Government venture to hope that the agreement for which the American Government have paved the way may be reached after due consideration of the remarks made above, and that in this way peaceable neutral shipping and trade will not have to suffer any more than is absolutely necessary from the unavoidable effects of maritime war. These effects could be still further reduced if, as was pointed out in the German note of the 16th instant, some way could be found to exclude the shipping of munitions of war from neutral countries to belligerents on ships of any nationality.

The German Government must, of course, reserve a definite statement of their position until such time as they may receive further information from the American Government enabling them to see what obligations the British Government are on their part willing to assume.

The undersigned avails himself of this occasion, etc.

(Signed)

VON JAGOW.

(*Dip. Corr.* 60-61.)

**No. 28. British and French declaration, March 1, 1915, in restraint of sea-borne commerce with Germany.†**

*The British Ambassador at Washington to the Secretary of State.*

Germany has declared that the English Channel, the north and west coasts of France, and the waters around the British Isles are a war area and has officially notified that all enemy ships found in that area will be destroyed and that neutral vessels may be exposed to danger. This is in effect a claim to torpedo at sight, without regard to the safety of the crew or passengers, any merchant vessel under any flag. As it is not in the power of the German Admiralty to maintain any surface craft in these waters, this attack can only be delivered by submarine agency.

The law and custom of nations in regard to attacks on commerce have always presumed that the first duty of the captor of a merchant vessel is to bring it before a prize court where it may be tried, where the regularity of the capture may be challenged and where neutrals may recover their cargoes. The sinking of prizes is in itself a questionable act to be resorted to only in extraordinary circumstances and after provision has been made for the safety of all

\* Apparent omission.

† Statement read by the British Prime Minister in the House of Commons and communicated to the neutral powers.

the crew or passengers, if there are passengers on board. The responsibility for discriminating between neutral and enemy vessels, and between neutral and enemy cargo, obviously rests with the attacking ship, whose duty it is to verify the status and character of the vessel and cargo and to preserve all papers before sinking or even capturing it. So also is the humane duty of providing for the safety of the crews of merchant vessels, whether neutral or enemy, an obligation upon every belligerent.

It is upon this basis that all previous discussions of the law for regulating warfare at sea have proceeded. A German submarine, however, fulfills none of these obligations; she enjoys no local command of the waters in which she operates; she does not take her captures within the jurisdiction of a prize court; she carries no prize crew which she can put on board a prize; she uses no effective means of discriminating between a neutral and an enemy vessel; she does not receive on board for safety the crew and passengers of the vessel she sinks; her methods of warfare are therefore entirely outside the scope of any of the international instruments regulating operations against commerce in time of war. The German declaration substitutes indiscriminate destruction for regulated capture. Germany is adopting these methods against peaceful traders and noncombatant crews with the avowed object of preventing commodities of all kinds, including food for the civil population, from reaching or leaving the British Isles or northern France.

Her opponents are therefore driven to frame retaliatory measures in order in their turn to prevent commodities of any kind from reaching or leaving Germany. These measures will, however, be enforced by the British and French Governments without risk to neutral ships or to neutral or noncombatant life and in strict observance of the dictates of humanity. The British and French Governments will therefore hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin. It is not intended to confiscate such vessels or cargoes unless they would otherwise be liable to condemnation. The treatment of vessels and cargoes which have sailed before this date will not be affected.

CECIL SPRING RICE.

(*Dip. Corr.* 61-62.)

**No. 29. Resolution of Congress, March 4, 1915, safeguarding the neutrality of American waters.**

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled that from and after the passage of this resolution, and during the existence of a war to which the United States is not a party and in order to prevent the neutrality of the United States from being violated by the use of its territory, its ports, or its territorial waters, as the base of operations for the armed forces of a belligerent, contrary to the obligations imposed by the law of nations, the treaties to which the United States is a party, or contrary to the statutes of the United States, the President be, and he is hereby authorized and empowered to direct the collectors of customs under the jurisdiction of the United States to withhold clearance from any vessel of American or foreign registry, or license, which he has reasonable cause to believe to be about to carry fuel, arms, ammunition, men, or supplies

to any warship, or tender, or supply ships of a belligerent nation in violation of the obligations of the United States as a neutral nation.

In case any such vessel of American register or license shall depart or attempt to depart from the jurisdiction of the United States, without clearance, for any of the purposes, the owner or master, or person or persons having charge or command of such vessel, shall severally be liable to a fine of not less than \$2,000, nor more than \$10,000, or to imprisonment not to exceed two years, or both; and in addition, such vessels shall be forfeited to the United States.

That the President of the United States be, and he is hereby authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this resolution.

That the provisions of this resolution shall be deemed to extend to all lands and water, continental or insular, within the jurisdiction of the United States.

(*The New York Times*, March 4, 1915.)

**No. 30. American note, March 5, 1915, inquiring how the restraint upon sea-borne commerce with Germany is to be effected.\***

*The Secretary of State to the American Ambassador at London.*

In regard to the recent communications received from the British and French Governments concerning restraints upon commerce with Germany, please communicate with the British foreign office in the sense following:

The difficulty of determining action upon the British and French declarations of intended retaliation upon commerce with Germany lies in the nature of the proposed measures in their relation to commerce by neutrals.

While it appears that the intention is to interfere with and take into custody all ships both outgoing and incoming, trading with Germany, which is in effect a blockade of German ports, the rule of blockade, that a ship attempting to enter or leave a German port regardless of the character of its cargo may be condemned, is not asserted.

The language of the declaration is "the British and French Governments will, therefore, hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin. It is not intended to confiscate such vessels or cargoes unless they would otherwise be liable to condemnation."

The first sentence claims a right pertaining only to a state of blockade. The last sentence proposes a treatment of ships and cargoes as if no blockade existed. The two together present a proposed course of action previously unknown to international law.

As a consequence neutrals have no standard by which to measure their rights or to avoid danger to their ships and cargoes. The paradoxical situation thus created should be changed and the declaring powers ought to assert whether they rely upon the rules governing a blockade or the rules applicable when no blockade exists.

The declaration presents other perplexities.

The last sentence quoted indicates that the rules of contraband are to be applied to cargoes detained. The rule covering noncontraband

\* See No. 28.

articles carried in neutral bottoms is that the cargoes shall be released and the ships allowed to proceed. This rule cannot, under the first sentence quoted, be applied as to destination. What then is to be done with a cargo of noncontraband goods detained under the declaration? The same question may be asked as to conditional contraband cargoes.

The foregoing comments apply to cargoes destined for Germany. Cargoes coming out of German ports present another problem under the terms of the declaration. Under the rules governing enemy exports only goods owned by enemy subjects in enemy bottoms are subject to seizure and condemnation. Yet by the declaration it is purposed to seize and take into port all goods of enemy "ownership and origin." The word "origin" is particularly significant. The origin of goods destined to neutral territory on neutral ships is not and never has been a ground for forfeiture except in case a blockade is declared and maintained. What then would the seizure amount to in the present case except to delay the delivery of the goods? The declaration does not indicate what disposition would be made of such cargoes if owned by a neutral or if owned by an enemy subject. Would a different rule be applied according to ownership? If so, upon what principles of international law would it rest? And upon what rule if no blockade is declared and maintained could the cargo of a neutral ship sailing out of a German port be condemned? If it is not condemned, what other legal course is there but to release it?

While this Government is fully alive to the possibility that the methods of modern naval warfare, particularly in the use of the submarine for both defensive and offensive operations, may make the former means of maintaining a blockade a physical impossibility, it feels that it can be urged with great force that there should be also some limit to "the radius of activity," and especially so if this action by the belligerents can be construed to be a blockade. It would certainly create a serious state of affairs if, for example, an American vessel laden with a cargo of German origin should escape the British patrol in European waters only to be held up by a cruiser off New York and taken into Halifax.

Similar cablegram sent to Paris.

BRYAN.

(*Dip. Corr.* 62-63.)

**No. 31. British proclamation, March 11, 1915, once more revising the list of contraband of war.\***

Whereas on the twenty-third day of December, 1914, we did issue our royal proclamation specifying the articles which it was our intention to treat as contraband during the continuance of hostilities or until we did give further public notice, and

Whereas it is expedient to make certain additions to the lists contained in the said proclamation:

Now, therefore, we do hereby declare, by and with the advice of our privy council, that during the continuance of the war or until we do give further public notice the following articles will be treated as absolute contraband in addition to those set out in our royal proclamation aforementioned:

Raw wool, wool tops and noils and woollen and worsted yarns.

\* See No. 10.

Tin, chloride of tin, tin ore.

Castor oil.

Paraffin wax.

Copper iodide.

Lubricants.

Hides of cattle, buffaloes, and horses; skins of calves, pigs, sheep, goats, and deer; leather, undressed or dressed, suitable for saddlery, harness, military boots, or military clothing.

Ammonia and its salts whether simple or compound; ammonia liquor, urea, aniline, and their compounds.

And we do hereby declare that the following articles will be treated as conditional contraband in addition to those set out in our royal proclamation aforementioned:

Tanning substances of all kinds (including extracts for use in tanning).

And we do hereby further declare that the terms "foodstuffs" and "feeding stuffs for animals" in the list of conditional contraband contained in our royal proclamation aforementioned shall be deemed to include oleaginous seeds, nuts and kernels; animal and vegetable oils and fats (other than linseed oil) suitable for use in the manufacture of margarine; and cakes and meals made from oleaginous seeds, nuts and kernels.

(*Dip. Corr. 17-18.*)

**No. 32. British memorandum, March 13, 1915, rejecting the American proposal of February 20 (No. 26).**

*The Secretary of State for Foreign Affairs to the American Ambassador.*

On the 22d of February last I received a communication from Your Excellency of the identic note addressed to His Majesty's Government and to Germany, respecting an agreement on certain points as to the conduct of the war at sea. The reply of the German Government to this note has been published and it is not understood from the reply that the German Government are prepared to abandon the practice of sinking British merchant vessels by submarines, and it is evident from their reply that they will not abandon the use of mines for offensive purposes on the high seas as contrasted with the use of mines for defensive purposes only within cannon range of their own harbors as suggested by the Government of the United States. This being so, it might appear unnecessary for the British Government to make any further reply than to take note of the German answer. We desire, however, to take the opportunity of making a fuller statement of the whole position and of our feeling with regard to it. We recognize with sympathy the desire of the Government of the United States to see the European war conducted in accordance with the previously recognized rules of international law and the dictates of humanity. It is thus that the British forces have conducted the war, and we are not aware that these forces, either naval or military, can have laid to their charge any improper proceedings, either in the conduct of hostilities or in the treatment of prisoners or wounded. On the German side it has been very different.

1. The treatment of civilian inhabitants in Belgium and the north of France has been made public by the Belgian and French Gov-

ernments and by those who have had experience of it at first hand. Modern history affords no precedent for the sufferings that have been inflicted on the defenseless and noncombatant population in the territory that has been in German military occupation. Even the food of the population was confiscated until in Belgium an International Commission, largely influenced by American generosity and conducted under American auspices, came to the relief of the population and secured from the German Government a promise to spare what food was still left in the country though the Germans still continue to make levies in money upon the defenseless population for the support of the German army.

2. We have from time to time received most terrible accounts of the barbarous treatment to which British officers and soldiers have been exposed after they have been taken prisoner while being conveyed to German prison camps; one or two instances have already been given to the United States Government founded upon authentic and first-hand evidence which is beyond doubt. Some evidence has been received of the hardships to which British prisoners of war are subjected in the prison camps contrasting, we believe, most unfavorably with the treatment of German prisoners in this country. We have proposed, with the consent of the United States Government, that a commission of United States officers should be permitted in each country to inspect the treatment of prisoners of war. The United States Government have been unable to obtain any reply from the German Government to this proposal and we remain in continuing anxiety and apprehension as to the treatment of British prisoners of war in Germany.

3. At the very outset of the war a German mine layer was discovered laying a mine field on the high seas. Further mine fields have been laid from time to time without warning and so far as we know are still being laid on the high seas, and many neutral as well as British vessels have been sunk by them.

4. At various times during the war German submarines have stopped and sunk British merchant vessels, thus making the sinking of merchant vessels a general practice, though it was admitted previously, if at all, only as an exception, the general rule to which the British Government have adhered being that merchant vessels, if captured, must be taken before a prize court. In one case already quoted in a note to the United States Government, a neutral vessel carrying foodstuffs to an unfortified town in Great Britain has been sunk. Another case is now reported in which a German armed cruiser has sunk an American vessel, the *William P. Frye*, carrying a cargo of wheat from Seattle to Queenstown. In both cases the cargoes were presumably destined for the civil population. Even the cargoes in such circumstances should not have been condemned without the decision of a prize court, much less should the vessels have been sunk. It is to be noted that both these cases occurred before the detention by the British authorities of the *Wilhelmina* and her cargo of foodstuffs which the German Government allege is the justification for their own action. The Germans have announced their intention of sinking British merchant vessels by torpedo without notice and without any provision for the safety of the crew. They have already carried out this intention in the case of neutral as well as of British vessels, and a number of noncombatant

and innocent lives on British vessels, unarmed and defenseless, have been destroyed in this way.

5. Unfortified, open, and defenseless towns, such as Scarborough, Yarmouth, and Whitby, have been deliberately and wantonly bombarded by German ships of war, causing in some cases considerable loss of civilian life, including women and children.

6. German aircraft have dropped bombs on the east coast of England where there were no military or strategic points to be attacked. On the other hand, I am aware of but two criticisms that have been made on British action in all these respects: (1) It is said that the British naval authorities also have laid some anchored mines on the high seas. They have done so, but the mines were anchored and so constructed that they would be harmless if they went adrift, and no mines whatever were laid by the British naval authorities till many weeks after the Germans had made a regular practice of laying mines on the high seas. (2) It is said that the British Government have departed from the view of international law which they had previously maintained that foodstuffs destined for the civil population should never be interfered with, this charge being founded on the submission to a prize court of the cargo of the *Wilhelmina*. The special considerations affecting this cargo have already been presented in a memorandum to the United States Government, and I need not repeat them here. Inasmuch as the stoppage of all foodstuffs is an admitted consequence of blockade, it is obvious that there can be no universal rule based on considerations of morality and humanity which is contrary to this practice. The right to stop foodstuffs destined for the civil population must therefore in any case be admitted if an effective "cordon" controlling intercourse with the enemy is drawn, announced, and maintained. Moreover, independently of rights arising from belligerent action in the nature of blockade, some other nations, differing from the opinion of the Governments of the United States and Great Britain, have held that to stop the food of the civil population is a natural and legitimate method of bringing pressure to bear on an enemy country, as it is upon the defense of a besieged town. It is also upheld on the authority of both Prince Bismarck and Count Caprivi, and therefore presumably is not repugnant to German morality. The following are the quotations from Prince Bismarck and Count Caprivi on this point. Prince Bismarck, in answering, in 1885, an application from the Kiel Chamber of Commerce for a statement of the view of the German Government on the question of the right to declare as contraband foodstuffs that were not intended for military forces, said: "I reply to the chamber of commerce that any disadvantage our commercial and carrying interests may suffer by the treatment of rice as contraband of war does not justify our opposing a measure which it has been thought fit to take in carrying on a foreign war. Every war is a calamity which entails evil consequences, not only on the combatants but also on neutrals. These evils may easily be increased by the interference of a neutral power with the way in which a third carries on the war to the disadvantage of the subjects of the interfering power, and by this means German commerce might be weighted with far heavier losses than a transitory prohibition of the rice trade in Chinese waters. The measure in question has for its object the shortening of the war by increasing the difficulties of



the enemy, and is a justifiable step in war if impartially enforced against all neutral ships." Count Caprivi, during a discussion in the German Reichstag on the 4th of March, 1892, on the subject of the importance of international protection for private property at sea, made the following statements: "A country may be dependent for her food or for her raw products upon her trade. In fact, it may be absolutely necessary to destroy the enemy's trade." . . . "The private introduction of provisions into Paris was prohibited during the siege, and in the same way a nation would be justified in preventing the import of food and raw produce." The Government of Great Britain have frankly declared, in concert with the Government of France, their intention to meet the German attempt to stop all supplies of every kind from leaving or entering British or French ports by themselves stopping supplies going to or from Germany for this end. The British fleet has instituted a blockade, effectively controlling by cruiser "cordon" all passage to and from Germany by sea. The difference between the two policies is, however, that while our object is the same as that of Germany, we propose to attain it without sacrificing neutral ships or noncombatant lives or inflicting upon neutrals the damage that must be entailed when a vessel and its cargo are sunk without notice, examination, or trial. I must emphasize again that this measure is a natural and necessary consequence of the unprecedented methods, repugnant to all law and morality, which have been described above, which Germany began to adopt at the very outset of the war, and the effects of which have been constantly accumulating.

(*Dip. Corr.* 64-65.)

**No. 33.** British note, March 15, 1915, replying to the American inquiry about the restraint on sea-borne commerce with Germany (No. 30).

*The Secretary of State for Foreign Affairs to the American Ambassador.*

1. His Majesty's Government have had under careful consideration the inquiries which, under instructions from your Government, Your Excellency addressed to me on the eighth instant regarding the scope and mode of application of the measures, foreshadowed in the British and French declarations of the first of March, for restricting the trade of Germany. Your Excellency explained and illustrated by reference to certain contingencies the difficulty of the United States Government in adopting a definite attitude toward these measures by reason of uncertainty regarding their bearing upon the commerce of neutral countries.

2. I can at once assure Your Excellency that subject to the paramount necessity of restricting German trade His Majesty's Government have made it their first aim to minimize inconvenience to neutral commerce. From the accompanying copy of the order in council, which is to be published to-day, you will observe that a wide discretion is afforded to the prize court in dealing with the trade of neutrals in such manner as may in the circumstances be deemed just and that full provision is made to facilitate claims by persons interested in any goods placed in the custody of the marshal of the prize court under the order. I apprehend that the perplexities to which Your Excellency refers will for the most part be dissipated

by the perusal of this document and that it is only necessary for me to add certain explanatory observations.

3. The effect of the order in council is to confer certain powers upon the executive officers of His Majesty's Government. The extent to which those powers will be actually exercised and the degree of severity with which the measures of blockade authorized will be put into operation, are matters which will depend on the administrative orders issued by the Government and the decisions of the authorities specially charged with the duty of dealing with individual ships and cargoes, according to the merits of each case. The United States Government may rest assured that the instructions to be issued by His Majesty's Government to the fleet and to the customs officials and executive committees concerned will impress upon them the duty of acting with the utmost despatch consistent with the object in view and of showing in every case such consideration for neutrals as may be compatible with that object which is, succinctly stated, to establish a blockade to prevent vessels from carrying goods for or coming from Germany.

4. His Majesty's Government have felt most reluctant at the moment of initiating a policy of blockade to exact from neutral ships all the penalties attaching to a breach of blockade. In their desire to alleviate the burden which the existence of a state of war at sea must inevitably impose on neutral sea-borne commerce, they declare their intention to refrain altogether from the exercise of the right to confiscate ships or cargoes which belligerents have always claimed in respect of breaches of blockade. They restrict their claim to the stopping of cargoes destined for or coming from the enemy's territory.

5. As regards cotton, full particulars of the arrangements contemplated have already been explained. It will be admitted that every possible regard has been had to the legitimate interests of the American cotton trade.

6. Finally, in reply to the penultimate paragraph of Your Excellency's note, I have the honor to state that it is not intended to interfere with neutral vessels carrying enemy cargo of noncontraband nature outside European waters, including the Mediterranean.

(*Dip. Corr.* 65.)

**No. 34. British order in council, March 15, 1915, in restraint of sea-borne commerce with Germany.**

Whereas the German Government has issued certain orders which, in violation of the usages of war, purport to declare the waters surrounding the United Kingdom a military area, in which all British and allied merchant vessels will be destroyed, irrespective of the safety of the lives of passengers and crew, and in which neutral shipping will be exposed to similar danger in view of the uncertainties of naval warfare; and

Whereas in a memorandum accompanying the said orders neutrals are warned against entrusting crews, passengers, or goods to British or allied ships;

Whereas such attempts on the part of the enemy give to His Majesty an unquestionable right of retaliation;

And whereas His Majesty has therefore decided to adopt further measures in order to prevent commodities of any kind from reach-

ing or leaving Germany, though such measures will be enforced without risk to neutral ships or to neutral or noncombatant life and in strict observance of the dictates of humanity;

And whereas the allies of His Majesty are associated with him in the steps now to be announced for restricting further the commerce of Germany;

His Majesty is therefore pleased, by and with the advice of his privy council, to order and it is hereby ordered as follows:

1. No merchant vessels (*sic*) which sailed from her port of departure after the first March, 1915, shall be allowed to proceed on her voyage to any German port.

Unless the vessel receives a pass enabling her to proceed to some neutral or allied port to be named in the pass, goods on board any such vessel must be discharged in a British port and placed in the custody of the marshal of the prize court. Goods so discharged, not being contraband of war, shall, if not requisitioned for the use of His Majesty, be restored by order of the court, upon such terms as the court may in the circumstances deem to be just, to the person entitled thereto.

2. No merchant vessel which sailed from any German port after the first March, 1915, shall be allowed to proceed on her voyage with any goods on board laden at such port.

All goods laden at such port must be discharged in a British or allied port. Goods so discharged in a British port shall be placed in the custody of the marshal of the prize court, and, if not requisitioned for the use of His Majesty, shall be detained or sold under the direction of the prize court. The proceeds of goods so sold shall be paid into court and dealt with in such manner as the court may in the circumstances deem to be just.

Provided, that no proceeds of the sale of such goods shall be paid out of court until the conclusion of peace, except on the application of the proper officer of the Crown, unless it be shown that the goods had become neutral property before the issue of this order.

Provided also, that nothing herein shall prevent the release of neutral property laden at such enemy port on the application of the proper officer of the Crown.

3. Every merchant vessel which sailed from her port of departure after the first of March, 1915, on her way to a port other than a German port, carrying goods with an enemy destination, or which are enemy property, may be required to discharge such goods in a British or allied port. Any goods so discharged in a British port shall be placed in the custody of the marshal of the prize court, and, unless they are contraband of war, shall, if not requisitioned for the use of His Majesty, be restored by order of the court, upon such terms as the court may in the circumstances deem to be just to the person entitled thereto.

Provided, that this article shall not apply in any case falling within articles 2 or 4 of this order.

4. Every merchant vessel which sailed from a port other than a German port after the first of March, 1915, having on board goods which are of enemy origin or are enemy property may be required to discharge such goods in a British or allied port. Goods so discharged in a British port shall be placed in the custody of the marshal of the prize court, and if not requisitioned for the use of His Majesty shall be detained or sold under the direction of the

prize court. The proceeds of goods so sold shall be paid into court and dealt with in such manner as the court may in the circumstances deem to be just.

Provided, that no proceeds of sale of such goods shall be paid out of court until the conclusion of peace except on the application of the proper officer of the Crown, unless it be shown that the goods had become neutral property before the issue of this order.

Provided also, that nothing herein shall prevent the release of neutral property of enemy origin on the application of the proper officer of the Crown.

5. Any person claiming to be interested in, or to have any claim in respect of, any goods (not being contraband of war) placed in the custody of the marshal of the prize court under this order, or in the proceeds of such goods, may forthwith issue a writ in the prize court against the proper officer of the Crown and apply for an order that the goods should be restored to him, or that their proceeds should be paid to him, or for such other order as the circumstances of the case may require.

The practice and procedure of the prize court shall, so far as applicable, be followed *mutatis mutandis* in any proceedings consequential upon this order.

6. A merchant vessel which has cleared for a neutral port from a British or allied port, or which has been allowed to pass, having an ostensible destination to a neutral port, and proceeds to an enemy port, shall, if captured on any subsequent voyage, be liable to condemnation.

7. Nothing in this order shall be deemed to affect the liability of any vessel or goods to capture or condemnation independently of this order.

8. Nothing in this order shall prevent the relaxation of the provisions of this order in respect of the merchant vessels of any country which declares that no commerce intended for or originating in Germany or belonging to Germany (*sic*) subjects shall enjoy the protection of its flag.

(*Dip. Corr.* 66.)

**No. 35. British order in council, March 23, 1915, authorizing the requisition of neutral ships.\***

Whereas by section 3 of the prize courts act, 1894, His Majesty in Council is authorized to make rules of court for regulating, subject to the provisions of the naval prize act, 1864, and the said act, the procedure and practice of prize courts within the meaning of the naval prize act, 1864, and the duties and conduct of the officers of the courts and of the practitioners therein, and for regulating the fees to be taken by the officers thereof, and the costs, charges, and expenses to be allowed to the practitioners therein:

And whereas in pursuance of the prize courts act, 1894, certain rules were made by the order of His Majesty in Council, dated the 5th day of August, 1914, and amended by the Orders of His Majesty in Council of the 30th day of September, 1914, and the 28th day of November, 1914, respectively, which said rules and amended rules were by the said orders in council directed to take effect *provisionally* in accordance with the provisions of section 2 of the

\* Presented by the Solicitor of the Crown in an argument in favor of requisitioning the cargo of foodstuffs on the *Wilhelmina*. See Nos. 20 and 25.

Rules Publication Act, 1893, from the dates of the said Orders in Council, respectively:

And whereas the provisions of section 1 of the rules publication act, 1893, were duly complied with in respect of the said rules and amended rules, and the same were *finally* made by the orders of His Majesty in Council, dated, respectively, the 17th day of September, 1914, the 28th day of November, 1914, and the 3d day of February, 1915.

And whereas it is expedient that the said rules and amended rules should be further amended.

And whereas on account of urgency this order should come into immediate operation.

*Now, therefore*, His Majesty, by virtue of the powers in this behalf by the said act or otherwise in him vested, is pleased, by and with the advice of his privy council, to order, and it is hereby ordered, as follows:

1. That in Order IX (discovery, inspection, and admission of documents and facts) of the said rules:

In rule 1, the words "upon filing an affidavit" shall be omitted.  
In rule 1, instead of the words "any other party" there shall be substituted the words "any party other than the proper officer of the Crown."

2. That in Order XI (sale, appraisalment, safe custody, and inspection of prize) of the said rules, in rule 1, the following words shall be omitted: "on account of the condition of a ship, or on application of a claimant, and on or after condemnation."

3. That in Order XV (evidence and hearing) of the said rules, the following rule shall be added:

"21. Notwithstanding anything contained in these rules the proper officer of the Crown may apply to the judge for leave to administer interrogatories for the examination of any person whether a party to the cause or not."

4. That Order XXIX (requisition by admiralty) of the said rules, as amended by His Majesty's Order in Council dated the 28th day of November, 1914, shall be, and the same is hereby, revoked, and in lieu thereof the following order shall have effect:

#### "ORDER XXIX — REQUISITION

"1. Where it is made to appear to the judge on the application of the proper officer of the Crown that it is desired to requisition on behalf of His Majesty a ship in respect of which no final decree of condemnation has been made, he shall order that the ship shall be appraised, and that upon an undertaking being given in accordance with rule 5 of this order, the ship shall be released and delivered to the Crown.

"2. Where a decree for the detention of a ship has been made in accordance with Order XXVIII, the proper officer of the Crown may file a notice (Appendix A, Form No. 55) that the Crown desires to requisition the same, and thereupon a commission (Appendix A, Form No. 56) to the marshal directing him to appraise the ship shall issue. Upon an undertaking being given in accordance with rule 5 of this order the ship shall be released, and delivered to the Crown. Service of this notice shall not be required before

filing, but copies thereof shall be served upon the parties by the proper officer of the Crown as soon thereafter as possible.

"3. Where in any case of requisition under this order it is made to appear to the judge on behalf of the Crown that the ship is required for the service of His Majesty forthwith, the judge may order the same to be forthwith released and delivered to the Crown without appraisalment.

"4. In any case where a ship has been requisitioned under the provisions of this order and whether or not an appraisalment has been made, the court may, on the application of any party, fix the amount to be paid by the Crown in respect of the value of the ship.

"5. In every case of requisition under this order an undertaking in writing shall be filed by the proper officer of the Crown for payment into court on behalf of the Crown of the appraised value of the ship, or of the amount fixed under Rule 4 of this order, as the case may be, at such time or times as the court shall declare by order that the same or any part thereof is required for the purpose of payment out of court.

"6. Where in any case of requisition under this order it is made to appear to the judge on behalf of the Crown that the Crown desires to requisition the ship temporarily, the court may, in lieu of an order of release, make an order for the temporary delivery of the ship to the Crown, and subject as aforesaid the provisions of this order shall apply to such a requisition; provided that, in the event of the return of the ship to the custody of the court, the court may make such order as it thinks fit for the release of the undertaking given on behalf of the Crown or the reduction of the amount undertaken to be paid thereby, as the case may be; and provided also that, where the ship so requisitioned is subject to the provisions of Order XXVIII, rule 1, relating to detention, the amount for which the Crown shall be considered liable in respect of such requisition shall be the amount of the damage, if any, which the ship has suffered by reason of such temporary delivery as aforesaid.

"7. The proceedings in respect of a ship requisitioned under this order shall continue notwithstanding the requisition.

"8. In any case of requisition of a ship in respect of which no cause has been instituted, any person interested in such ship may, without issuing a writ, provided he does not intend to make a claim for restitution or damages, apply by summons for an order that the amount to be paid in respect of such ship be fixed by the court, and the judge may, on the hearing of such summons, order the ship to be appraised or to be valued, or give such other directions for fixing the amount as he may think fit."

5. That in Form 4 in Appendix A to the said rules there shall be omitted the words "commander of our ship of war" and the words "taken and seized as prize by our said ship of war."

6. This order shall take effect *provisionally* in accordance with the provisions of Section 2 of the rules publication act, 1893, from the date hereof.

(Dip. Corr. 72-73.)

**No. 36. American note, March 30, 1915, regarding British violation of neutral rights.**

*The Secretary of State to the American Ambassador at London.*

You are instructed to deliver the following to His Majesty's Government in reply to your numbers 1795 and 1798 of March 15:

The Government of the United States has given careful consideration to the subjects treated in the British notes of March 13 and March 15, and to the British Order in Council of the latter date.

These communications contain matters of grave importance to neutral nations. They appear to menace their rights of trade and intercourse not only with belligerents but also with one another. They call for frank comment in order that misunderstandings may be avoided. The Government of the United States deems it its duty, therefore, speaking in the sincerest spirit of friendship, to make its own view and position with regard to them unmistakably clear.

The Order in Council of the 15th of March would constitute, were its provisions to be actually carried into effect as they stand, a practical assertion of unlimited belligerent rights over neutral commerce within the whole European area, and an almost unqualified denial of the sovereign rights of the nations now at peace.

This Government takes it for granted that there can be no question what those rights are. A nation's sovereignty over its own ships and citizens under its own flag on the high seas in time of peace is, of course, unlimited; and that sovereignty suffers no diminution in time of war, except in so far as the practice and consent of civilized nations has limited it by the recognition of certain now clearly determined rights, which it is conceded may be exercised by nations which are at war.

A belligerent nation has been conceded the right of visit and search, and the right of capture and condemnation, if upon examination a neutral vessel is found to be engaged in unneutral service or to be carrying contraband of war intended for the enemy's government or armed forces. It has been conceded the right to establish and maintain a blockade of an enemy's ports and coasts and to capture and condemn any vessel taken in trying to break the blockade. It is even conceded the right to detain and take to its own ports for judicial examination all vessels which it suspects for substantial reasons to be engaged in unneutral or contraband service and to condemn them if the suspicion is sustained. But such rights, long clearly defined both in doctrine and practice, have hitherto been held to be the only permissible exceptions to the principle of universal equality of sovereignty on the high seas as between belligerents and nations not engaged in war.

It is confidently assumed that His Majesty's Government will not deny that it is a rule sanctioned by general practice that, even though a blockade should exist and the doctrine of contraband as to unblockaded territory be rigidly enforced, innocent shipments may be freely transported to and from the United States through neutral countries to belligerent territory without being subject to the penalties of contraband traffic or breach of blockade, much less to detention, requisition, or confiscation.

Moreover the rules of the Declaration of Paris of 1856—among

them that free ships make free goods — will hardly at this day be disputed by the signatories of that solemn agreement.

His Majesty's Government, like the Government of the United States, have often and explicitly held that these rights represent the best usage of warfare in the dealings of belligerents with neutrals at sea. In this connection I desire to direct attention to the opinion of the Chief Justice of the United States in the case of the *Peterhof*, which arose out of the Civil War, and to the fact that that opinion was unanimously sustained in the award of the Arbitration Commission of 1871, to which the case was presented at the request of Great Britain. From that time to the Declaration of London of 1909, adopted with modifications by the Order in Council of the 23d of October last, these rights have not been seriously questioned by the British Government. And no claim on the part of Great Britain of any justification for interfering with these clear rights of the United States and its citizens as neutrals could be admitted. To admit it would be to assume an attitude of unneutrality toward the present enemies of Great Britain which would be obviously inconsistent with the solemn obligations of this Government in the present circumstances; and for Great Britain to make such a claim would be for her to abandon and set at naught the principles for which she has consistently and earnestly contended in other times and circumstances.

The note of His Majesty's Principal Secretary of State for Foreign Affairs which accompanies the Order in Council, and which bears the same date, notifies the Government of the United States of the establishment of a blockade which is, if defined by the terms of the Order in Council, to include all the coasts and ports of Germany and every port of possible access to enemy territory. But the novel and quite unprecedented feature of that blockade, if we are to assume it to be properly so defined, is that it embraces many neutral ports and coasts, bars access to them, and subjects all neutral ships seeking to approach them to the same suspicion that would attach to them were they bound for the ports of the enemies of Great Britain, and to unusual risks and penalties.

It is manifest that such limitations, risks, and liabilities placed upon the ships of a neutral power on the high seas, beyond the right of visit and search and the right to prevent the shipment of contraband already referred to, are a distinct invasion of the sovereign rights of the nation whose ships, trade, or commerce is interfered with.

The Government of the United States is, of course, not oblivious to the great changes which have occurred in the conditions and means of naval warfare since the rules hitherto governing legal blockade were formulated. It might be ready to admit that the old form of "close" blockade with its cordon of ships in the immediate offing of the blockaded ports is no longer practicable in face of an enemy possessing the means and opportunity to make an effective defense by the use of submarines, mines, and air craft; but it can hardly be maintained that, whatever form of effective blockade may be made use of, it is impossible to conform at least to the spirit and principles of the established rules of war. If the necessities of the case should seem to render it imperative that the cordon of blockading vessels be extended across the approaches to any neighboring neutral port or country, it would seem clear that it would still be



easily practicable to comply with the well-recognized and reasonable prohibition of international law against the blockading of neutral ports by according free admission and exit to all lawful traffic with neutral ports through the blockading cordon. This traffic would of course include all outward-bound traffic from the neutral country and all inward-bound traffic to the neutral country except contraband in transit to the enemy. Such procedure need not conflict in any respect with the rights of the belligerent maintaining the blockade since the right would remain with the blockading vessels to visit and search all ships either entering or leaving the neutral territory which they were in fact, but not of right, investing.

The Government of the United States notes that in the Order in Council His Majesty's Government give as their reason for entering upon a course of action, which they are aware is without precedent in modern warfare, the necessity they conceive themselves to have been placed under to retaliate upon their enemies for measures of a similar nature which the latter have announced it their intention to adopt and which they have to some extent adopted; but the Government of the United States, recalling the principles upon which His Majesty's Government have hitherto been scrupulous to act, interprets this as merely a reason for certain extraordinary activities on the part of His Majesty's naval forces and not as an excuse for or prelude to any unlawful action. If the course pursued by the present enemies of Great Britain should prove to be in fact tainted by illegality and disregard of the principles of war sanctioned by enlightened nations, it cannot be supposed, and this Government does not for a moment suppose, that His Majesty's Government would wish the same taint to attach to their own actions or would cite such illegal acts as in any sense or degree a justification for similar practices on their part in so far as they affect neutral rights.

It is thus that the Government of the United States interprets the language of the note of His Majesty's Principal Secretary of State for Foreign Affairs which accompanies the copy of the Order in Council which was handed to the Ambassador of the United States near the Government in London and by him transmitted to Washington.

This Government notes with gratification that "wide discretion is afforded to the prize court in dealing with the trade of neutrals in such manner as may in the circumstances be deemed just, and that full provision is made to facilitate claims by persons interested in any goods placed in the custody of the marshal of the prize court under the order"; that "the effect of the Order in Council is to confer certain powers upon the executive officers of His Majesty's Government"; and that "the extent to which these powers will be actually exercised and the degree of severity with which the measures of blockade authorized will be put into operation are matters which will depend on the administrative orders issued by the Government and the decisions of the authorities especially charged with the duty of dealing with individual ships and cargoes according to the merits of each case." This Government further notes with equal satisfaction the declaration of the British Government that "the instructions to be issued by His Majesty's Government to the fleet and to the customs officials and executive committees concerned will impress upon them the duty of acting with the utmost despatch consistent with the object in view, and of showing in every case such con-

sideration for neutrals as may be compatible with that object, which is, succinctly stated, to establish a blockade to prevent vessels from carrying goods for or coming from Germany."

In view of these assurances formally given to this Government, it is confidently expected that the extensive powers conferred by the Order in Council on the executive officers of the Crown will be restricted by "orders issued by the Government" directing the exercise of their discretionary powers in such a manner as to modify in practical application those provisions of the Order in Council which, if strictly enforced, would violate neutral rights and interrupt legitimate trade. Relying on the faithful performance of these voluntary assurances by His Majesty's Government the United States takes it for granted that the approach of American merchantmen to neutral ports situated upon the long line of coast affected by the Order in Council will not be interfered with when it is known that they do not carry goods which are contraband of war or goods destined to or proceeding from ports within the belligerent territory affected.

The Government of the United States assumes with the greater confidence that His Majesty's Government will thus adjust their practice to the recognized rules of international law, because it is manifest that the British Government have adopted an extraordinary method of "stopping cargoes destined for or coming from the enemy's territory," which, owing to the existence of unusual conditions in modern warfare at sea, it will be difficult to restrict to the limits which have been heretofore required by the law of nations. Though the area of operations is confined to "European waters including the Mediterranean," so great an area of the high seas is covered and the cordon of ships is so distant from the territory affected that neutral vessels must necessarily pass through the blockading force in order to reach important neutral ports which Great Britain as a belligerent has not the legal right to blockade and which, therefore, it is presumed she has no intention of claiming to blockade. The Scandinavian and Danish ports, for example, are open to American trade. They are also free, so far as the actual enforcement of the Order in Council is concerned, to carry on trade with German Baltic ports although it is an essential element of blockade that it bear with equal severity upon all neutrals.

This Government, therefore, infers that the commanders of His Majesty's ships of war engaged in maintaining the so-called blockade will be instructed to avoid an enforcement of the proposed measures of nonintercourse in such a way as to impose restrictions upon neutral trade more burdensome than those which have been regarded as inevitable when the ports of a belligerent are actually blockaded by the ships of its enemy.

The possibilities of serious interruption of American trade under the Order in Council are so many, and the methods proposed are so unusual and seem liable to constitute so great an impediment and embarrassment to neutral commerce that the Government of the United States, if the Order in Council is strictly enforced, apprehends many interferences with its legitimate trade which will impose upon His Majesty's Government heavy responsibilities for acts of the British authorities clearly subversive of the rights of neutral nations on the high seas. It is, therefore, expected that His Majesty's Government, having considered these possibilities, will take

the steps necessary to avoid them, and, in the event that they should unhappily occur, will be prepared to make full reparation for every act which under the rules of international law constitutes a violation of neutral rights.

As stated in its communication of October 22, 1914, "this Government will insist that the rights and duties of the United States and its citizens in the present war be defined by the existing rules of international law and the treaties of the United States, irrespective of the provisions of the Declaration of London, and that this Government reserves to itself the right to enter a protest or demand in each case in which those rights and duties so defined are violated or their free exercise interfered with, by the authorities of the British Government."

In conclusion you will reiterate to His Majesty's Government that this statement of the views of the Government of the United States is made in the most friendly spirit, and in accordance with the uniform candor which has characterized the relations of the two Governments in the past, and which has been in large measure the foundation of the peace and amity existing between the two nations without interruption for a century.

BRYAN.

(*Dip. Corr.* 69-72.)

**No. 37. First American note, March 31, 1915, in regard to the "William P. Frye."**

*The Secretary of State to the American Ambassador at Berlin.*

You are instructed to present the following note to the German Foreign Office:

Under instructions from my Government I have the honor to present a claim for \$228,059.54, with interest from January 28, 1915, against the German Government on behalf of the owners and captain of the American sailing vessel *William P. Frye* for damages suffered by them on account of the destruction of that vessel on the high seas by the German armed cruiser *Prinz Eitel Friedrich*, on January 28, 1915.

The facts upon which this claim arises and by reason of which the German Government is held responsible by the Government of the United States for the attendant loss and damages are briefly as follows:

The *William P. Frye*, a steel sailing vessel of 3,374 tons gross tonnage, owned by American citizens and sailing under the United States flag and register, cleared from Seattle, Wash., November 4, 1914, under charter to M. H. Houser, of Portland, Oreg., bound for Queenstown, Falmouth, or Plymouth for orders, with a cargo consisting solely of 186,950 bushels of wheat owned by the aforesaid Houser and consigned "unto order or to its assigns," all of which appears from the ship's papers which were taken from the vessel at the time of her destruction by the commander of the German cruiser.

On January 27, 1915, the *Prinz Eitel Friedrich* encountered the *Frye* on the high seas, compelled her to stop, and sent on board an armed boarding party, who took possession. After an examination of the ship's papers the commander of the cruiser directed that the cargo be thrown overboard, but subsequently decided to destroy the vessel, and on the following morning, by his order, the *Frye* was sunk.

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The claim of the owners and captain consists of the following items:

Value of ship, equipment, and outfit.....	\$150,000.00
Actual freight as per freight list, 5034 1000/2240 tons at 32-6 — £8180-19-6 at \$4.86.....	39,759.54
Traveling and other expenses of Capt. Kiehne and Arthur Sewall & Co., agents of ship, in connection with making affidavits, preparing and filing claim .....	500.00
Personal effects of Capt. H. H. Kiehne.....	300.00
Damages covering loss due to deprivation of use of ship .....	37,500.00
<b>Total .....</b>	<b>\$228,059.54</b>

By direction of my Government, I have the honor to request that full reparation be made by the German Government for the destruction of the *William P. Frye* by the German cruiser *Prinz Eitel Friedrich*.

BRYAN.

(*Dip. Corr.* 87.)

**No. 38. German memorandum, April 4, 1915, concerning the British restraint of sea-borne commerce with Germany and the American exportation of war material.**

*The German Ambassador to the Secretary of State.*

The various British Orders in Council have one-sidedly modified the generally recognized principles of international law in a way which arbitrarily stops the commerce of neutral nations with Germany. Even before the last British Order in Council, the shipment of conditional contraband, especially food supplies, to Germany was practically impossible. Prior to the protest sent by the American to the British Government on December 28 last, such a shipment did not actually take place in a single case. Even after this protest the Imperial Embassy knows of only a single case in which an American shipper has ventured to make such a shipment for the purpose of legitimate sale to Germany. Both ship and cargo were immediately seized by the English and are being held in an English port under the pretext of an order of the German Federal Council (Bundesrat) regarding the grain trade, although this resolution of the Federal Council relates exclusively to grain and flour, and not to other foodstuffs, besides making an express exception with respect to imported foodstuffs, and although the German Government gave the American Government an assurance, and proposed a special organization whereby the exclusive consumption by the civilian population is absolutely guaranteed.

Under the circumstances the seizure of the American ship was inadmissible according to recognized principles of international law. Nevertheless the United States Government has not to date secured the release of the ship and cargo, and has not, after a duration of the war of eight months, succeeded in protecting its lawful trade with Germany.

Such a long delay, especially in matters of food supply, is equivalent to an entire denial.

The Imperial Embassy must therefore assume that the United States Government acquiesces in the violations of international law by Great Britain.

Then there is also the attitude of the United States in the question of the exportation of arms. The Imperial Government feels sure that the United States Government will agree that in questions of neutrality it is necessary to take into consideration not only the formal aspect of the case, but also the spirit in which the neutrality is carried out.

The situation in the present war differs from that of any previous war. Therefore any reference to arms furnished by Germany in former wars is not justified, for then it was not a question *whether* war material should be supplied to the belligerents, but *who* should supply it in competition with other nations. In the present war all nations having a war material industry worth mentioning are either involved in the war themselves or are engaged in perfecting their own armaments, and have therefore laid an embargo against the exportation of war material. The United States is accordingly the only neutral country in a position to furnish war materials. The conception of neutrality is thereby given a new purport, independently of the formal question of hitherto existing law. In contradiction thereto, the United States is building up a powerful arms industry in the broadest sense, the existing plants not only being worked but enlarged by all available means, and new ones built. The international conventions for the protection of the rights of neutral nations doubtless sprang from the necessity of protecting the existing industries of neutral nations as far as possible from injury in their business. But it can in no event be in accordance with the spirit of true neutrality if, under the protection of such international stipulations, an entirely new industry is created in a neutral state, such as is the development of the arms industry in the United States, the business whereof, under the present conditions, can benefit only the belligerent powers.

This industry is actually delivering goods only to the enemies of Germany. The theoretical willingness to supply Germany also if shipments thither were possible, does not alter the case. If it is the will of the American people that there shall be a true neutrality, the United States will find means of preventing this one-sided supply of arms or at least of utilizing it to protect legitimate trade with Germany, especially that in foodstuffs. This view of neutrality should all the more appeal to the United States Government because the latter enacted a similar policy toward Mexico. On February 4, 1914, President Wilson, according to a statement of a Representative in Congress in the Committee for Foreign Affairs of December 30, 1914, upon the lifting of the embargo on arms to Mexico, declared that "we should stand for genuine neutrality, considering the surrounding facts of the case. . . ." He then held that "in that case, because Carranza had no ports, while Huerta had them and was able to import these materials, that it was our duty as a nation to treat (Carranza and Huerta) upon an equality if we wished to observe the true spirit of neutrality as compared with a mere paper neutrality."

If this view were applied to the present case, it would lead to an embargo on the exportation of arms.

(*Dip. Corr.* 73-74.)

**No. 39. First German note, April 5, 1915, in regard to the "William P. Frye."\***

*The Minister for Foreign Affairs to the American Ambassador.*

The undersigned has the honor to make reply to the note of his Excellency, Mr. James W. Gerard, Ambassador, the United States America, dated the 3d instant, foreign office No. 2892, relative to claims for damages for the sinking of the American merchant vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich*.

According to the reports which have reached the German Government the commander of the *Prinz Eitel Friedrich* stopped the *William P. Frye* on the high seas January 27, 1915, and searched her. He found on board a cargo of wheat consigned to Queenstown, Falmouth, or Plymouth to order. After he had first tried to remove the cargo from the *William P. Frye* he took the ship's papers and her crew on board and sank ship.

It results from these facts that the German commander acted quite in accordance with the principles of international law as laid down in the Declaration of London and the German prize ordinance. The ports of Queenstown, Falmouth, and Plymouth, whither the ship visited was bound, are strongly fortified English coast places, which, moreover, serve as bases for the British naval forces. The cargo of wheat being food or foodstuffs, was conditional contraband within the meaning of article 24, No. 1, of the Declaration of London, and article 23, No. 1, of the German prize ordinance, and was therefore to be considered as destined for the armed forces of the enemy, pursuant to articles 33 and 34 of the Declaration of London, and articles 32 and 33 of the German prize ordinance, and to be treated as contraband pending proof of the contrary. This proof was certainly not capable of being adduced at the time of the visiting of the vessel, since the cargo papers read to order. This, however, furnished the conditions under which, pursuant to article 49 of the Declaration of London and article 113 of the German prize ordinance the sinking of the ship was permissible, since it was not possible for the auxiliary cruiser to take the prize into a German port without involving danger to its own security or the success of its operations. The duties devolving upon the cruiser before destruction of the ship, pursuant to article 50 of the Declaration of London and article 116 of the German prize ordinance, were fulfilled by the cruiser in that it took on board all the persons found on the sailing vessel, as well as the ship's papers.

The legality of the measures taken by the German commander is furthermore subject to examination by the German prize court pursuant to article 51 of the Declaration of London and section 1, No. 2, of the German Code of Prize Procedure. These prize proceedings will be instituted before the prize court at Hamburg as soon as the ship's papers are received and will comprise the settlement of questions whether the destruction of the cargo and the ship was necessary within the meaning of article 49 of the Declaration of London; whether the property sunk was liable to capture; and whether, or to what extent, indemnity is to be awarded the owners. In the trial the owners of ship and cargo would be at liberty, pursuant to article 34, paragraph 3, of the Declaration of London, to adduce proof that

\* See No. 37.

the cargo of wheat had an innocent destination and did not, therefore, have the character of contraband. If such proof is not adduced, the German Government would not be liable for any compensation whatever, according to the general principles of international law.

However, the legal situation is somewhat different in the light of the special stipulations applicable to the relations between Germany and the United States since article 13 of the Prussian-American treaty of friendship and commerce of July 11, 1799, taken in connection with article 12 of Prussian-American treaty of commerce and navigation of May 1, 1828, provides that contraband belonging to the subjects or citizens of either party cannot be confiscated by the other in any case but only detained or used in consideration of payment of the full value of the same. On the ground of this treaty stipulation which is as a matter of course binding on the German prize court the American owners of ship and cargo would receive compensation even if the court should declare the cargo of wheat to be contraband. Nevertheless the approaching prize proceedings are not rendered superfluous since the competent prize court must examine into the legality of the capture and destruction and also pronounce upon the standing of the claimants and the amount of indemnity.

The undersigned begs to suggest that the ambassador bring the above to the knowledge of his Government and avails himself, etc.

(Signed) JAGOW.

(*Dip. Corr.* 87-88.)

**No. 40. British memorandum, April 8, 1915, in reference to the "Wilhelmina."\***

*The Prime Minister to the American Ambassador.*

His Majesty's Government share the desire of the United States Government for an immediate settlement of the case of the *Wilhelmina*. This American ship laden with foodstuffs left New York for Hamburg on January 22nd. She called at Falmouth of her own accord on February 9th and her cargo was detained as prize on February 11th. The writ instituting prize court proceedings was issued on February 27th, and claimed that the cargo should be condemned as contraband of war. No proceedings were taken or even threatened against the ship herself, and in the ordinary course the cargo would have been unloaded when seized so that the ship would be free to leave. The owners of the cargo, however, have throughout objected to the discharge of the cargo and it is because of this objection that the ship is still at Falmouth with the cargo on board.

His Majesty's Government have formally undertaken that even should the condemnation of the cargo as contraband be secured in the prize court they would none the less compensate the owners for any loss sustained in consequence of the ship having been stopped and proceedings taken against the cargo.

It was understood at the time that the proceedings in the prize court would be in the nature of a test case, the decision in which would govern the treatment of any subsequent shipments of food supplies to Germany in similar circumstances. Since then the situation has, however, materially changed by the issue of the Order in Council of March 11, 1915, and the measures taken thereunder which

\* See Nos. 20 and 25.

prevent further supplies being sent from America to Germany, whether contraband or not.

In these circumstances there is no longer an object in continuing the judicial proceedings in the case of the *Wilhelmina*; for it can no longer serve as a test case, and it is really agreed that the owners of the cargo, even if proved to have no claim, are to be treated as if their claim was good. Nothing therefore remains but to settle the claim on proper and just conditions, and this would, in the opinion of His Majesty's Government, be secured most expeditiously and with the least inconvenience to all parties by an agreement between the Crown and the claimants for the disposal of the whole matter. His Majesty's Government accordingly propose that such an agreement be arrived at on the following terms: "His Majesty's Government having undertaken to compensate the claimants by paying for the cargo seized on the basis of the loss of the profit the claimants would have made if the ship had proceeded in due course to Hamburg, and by indemnifying them for the delay caused to the ship so far as this delay has been due to the action of the British authorities, all proceedings in the prize court shall be stayed, on the understanding that His Majesty's Government buy the cargo from the claimants on the above terms. The cargo shall be discharged and delivered to the proper officer of the Crown forthwith. The sum to be paid shall be assessed by a single referee nominated jointly by the ambassador of the United States of America and His Majesty's principal secretary of state for foreign affairs, who shall certify the total amount after making such inquiries as he may think fit, but without formal hearing or arbitration." His Majesty's Government would be grateful if the United States ambassador would inform the claimants of the above proposal at his early convenience and obtain their acceptance.

(*Dip. Corr.* 83-84.)

**No. 41. American note, April 21, 1915, replying to No. 38.**

*The Secretary of State to the German Ambassador.*

EXCELLENCY: I have given thoughtful consideration to Your Excellency's note of the 4th of April, 1915, enclosing a memorandum of the same date, in which Your Excellency discusses the action of this Government with regard to trade between the United States and Germany and the attitude of this Government with regard to the exportation of arms from the United States to the nations now at war with Germany.

I must admit that I am somewhat at a loss how to interpret Your Excellency's treatment of these matters. There are many circumstances connected with these important subjects to which I would have expected Your Excellency to advert, but of which you make no mention, and there are other circumstances to which you do refer which I would have supposed to be hardly appropriate for discussion between the Government of the United States and the Government of Germany.

I shall take the liberty, therefore, of regarding Your Excellency's references to the course pursued by the Government of the United States with regard to interferences with trade from this country, such as the Government of Great Britain have attempted, as intended merely to illustrate more fully the situation to which you desire to



call our attention and not as an invitation to discuss that course. Your Excellency's long experience in international affairs will have suggested to you that the relations of the two Governments with one another cannot wisely be made a subject of discussion with a third Government, which cannot be fully informed as to the facts and which cannot be fully cognizant of the reasons for the course pursued. I believe, however, that I am justified in assuming that what you desire to call forth is a frank statement of the position of this Government in regard to its obligations as a neutral power. The general attitude and course of policy of this Government in the maintenance of its neutrality I am particularly anxious that Your Excellency should see in their true light. I had hoped that this Government's position in these respects had been made abundantly clear, but I am of course perfectly willing to state it again. This seems to me the more necessary and desirable because, I regret to say, the language which Your Excellency employs in your memorandum is susceptible of being construed as impugning the good faith of the United States in the performance of its duties as a neutral. I take it for granted that no such implication was intended, but it is so evident that Your Excellency is laboring under certain false impressions that I cannot be too explicit in setting forth the facts as they are, when fully reviewed and comprehended.

In the first place, this Government has at no time and in no manner yielded any one of its rights as a neutral to any of the present belligerents. It has acknowledged, as a matter of course, the right of visit and search and the right to apply the rules of contraband of war to articles of commerce. It has, indeed, insisted upon the use of visit and search as an absolutely necessary safeguard against mistaking neutral vessels for vessels owned by an enemy and against mistaking legal cargoes for illegal. It has admitted also the right of blockade if actually exercised and effectively maintained. These are merely the well-known limitations which war places upon neutral commerce on the high seas. But nothing beyond these has it conceded. I call Your Excellency's attention to this, notwithstanding it is already known to all the world as a consequence of the publication of our correspondence in regard to these matters with several of the belligerent nations, because I cannot assume that you have official cognizance of it.

In the second place, this Government attempted to secure from the German and British Governments mutual concessions with regard to the measures those Governments respectively adopted for the interruption of trade on the high seas. This it did, not of right, but merely as exercising the privileges of a sincere friend of both parties and as indicating its impartial good will. The attempt was unsuccessful; but I regret that Your Excellency did not deem it worthy of mention in modification of the impressions you expressed. We had hoped that this act on our part had shown our spirit in these times of distressing war as our diplomatic correspondence had shown our steadfast refusal to acknowledge the right of any belligerent to alter the accepted rules of war at sea in so far as they affect the rights and interests of neutrals.

In the third place, I note with sincere regret that, in discussing the sale and exportation of arms by citizens of the United States to the enemies of Germany, Your Excellency seems to be under the impression that it was within the choice of the Government of

the United States, notwithstanding its professed neutrality and its diligent efforts to maintain it in other particulars, to inhibit this trade, and that its failure to do so manifested an unfair attitude toward Germany. This Government holds, as I believe Your Excellency is aware, and as it is constrained to hold in view of the present indisputable doctrines of accepted international law, that any change in its own laws of neutrality during the progress of a war which would affect unequally the relations of the United States with the nations at war would be an unjustifiable departure from the principle of strict neutrality by which it has consistently sought to direct its actions, and I respectfully submit that none of the circumstances urged in Your Excellency's memorandum alters the principle involved. The placing of an embargo on the trade in arms at the present time would constitute such a change and be a direct violation of the neutrality of the United States. It will, I feel assured, be clear to Your Excellency that, holding this view and considering itself in honor bound by it, it is out of the question for this Government to consider such a course.

I hope that Your Excellency will realize the spirit in which I am drafting this reply. The friendship between the people of the United States and the people of Germany is so warm and of such long standing, the ties which bind them to one another in amity are so many and so strong, that this Government feels under a special compulsion to speak with perfect frankness when any occasion arises which seems likely to create any misunderstanding, however slight or temporary, between those who represent the Governments of the two countries. It will be a matter of gratification to me if I have removed from Your Excellency's mind any misapprehension you may have been under regarding either the policy or the spirit and purposes of the Government of the United States. Its neutrality is founded upon the firm basis of conscience and good will.

Accept, etc.,

W. J. BRYAN.

(*Dip. Corr.* 74-75.)

**No. 42. Announcement of the German Embassy, April 22, 1915, warning against embarkation on vessels belonging to Great Britain or its allies.**

NOTICE!

Travellers intending to embark on the Atlantic voyage are reminded that a state of war exists between Germany and her allies and Great Britain and her allies; that the zone of war includes the waters adjacent to the British Isles; that, in accordance with formal notice given by the Imperial German Government, vessels flying the flag of Great Britain, or of any of her allies, are liable to destruction in those waters and that travellers sailing in the war zone on ships of Great Britain or her allies do so at their own risk.

IMPERIAL GERMAN EMBASSY.

Washington, D. C., April 22nd, 1915.

(*The New York Times*, May 8, 1915.)

No. 43. Second American note, April 28, 1915, in regard to the "William P. Frye." \*

*The Secretary of State to the American Ambassador at Berlin.*

You are instructed to present the following note to the German Foreign Office:

In reply to Your Excellency's note of the 5th instant, which the Government of the United States understands admits the liability of the Imperial German Government for the damages resulting from the sinking of the American sailing vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich* on January 28 last, I have the honor to say, by direction of my Government, that while the promptness with which the Imperial German Government has admitted its liability is highly appreciated, my Government feels that it would be inappropriate in the circumstances of this case, and would involve unnecessary delay to adopt the suggestion in your note that the legality of the capture and destruction, the standing of the claimants, and the amount of indemnity should be submitted to a prize court.

Unquestionably the destruction of this vessel was a violation of the obligations imposed upon the Imperial German Government under existing treaty stipulations between the United States and Prussia, and the United States Government, by virtue of its treaty rights, has presented to the Imperial German Government a claim for indemnity on account of the resulting damages suffered by American citizens. The liability of the Imperial German Government and the standing of the claimants as American citizens and the amount of indemnity are all questions which lend themselves to diplomatic negotiation between the two Governments, and happily the question of liability has already been settled in that way. The status of the claimants and the amount of the indemnity are the only questions remaining to be settled, and it is appropriate that they should be dealt with in the same way.

The Government of the United States fully understands that, as stated in Your Excellency's note, the German Government is liable under the treaty provisions above mentioned for the damages arising from the destruction of the cargo as well as from the destruction of the vessel. But it will be observed that the claim under discussion does not include damages for the destruction of the cargo, and the question of the value of the cargo therefore is not involved in the present discussion.

The Government of the United States recognizes that the German Government will wish to be satisfied as to the American ownership of the vessel, and the amount of the damages sustained in consequence of her destruction.

These matters are readily ascertainable and if the German Government desires any further evidence in substantiation of the claim on these points in addition to that furnished by the ship's papers, which are already in the possession of the German Government, any additional evidence found necessary will be produced. In that case, however, inasmuch as any evidence which the German Government may wish to have produced is more accessible and can more conveniently be examined in the United States than elsewhere, on account of the presence there of the owners and captain of the

\* See Nos. 37 and 39.

*William P. Frye* and their documentary records, and other possible witnesses, the Government of the United States ventures to suggest the advisability of transferring the negotiations for the settlement of these points to the Imperial German Embassy at Washington.

In view of the admission of liability by reason of specific treaty stipulations, it has become unnecessary to enter into a discussion of the meaning and effect of the Declaration of London, which is given some prominence in Your Excellency's note of April 5, further than to say that, as the German Government has already been advised, the Government of the United States does not regard the Declaration of London as in force.

BRYAN.

(*Dip. Corr.* 88.)

**No. 44. German note, May 10, 1915, expressing regret for the loss of American lives through the sinking of the "Lusitania."**

*The German Foreign Office to the German Embassy at Washington.*

Please communicate the following to the State Department: The German Government desires to express its deepest sympathy at the loss of lives on board the *Lusitania*. The responsibility rests, however, with the British Government, which, through its plan of starving the civilian population of Germany, has forced Germany to resort to retaliatory measures.

In spite of the German offer to stop the submarine war in case the starvation plan was given up, British merchant vessels are being generally armed with guns and have repeatedly tried to ram submarines, so that a previous search was impossible.

They cannot, therefore, be treated as ordinary merchant vessels. A recent declaration made to the British Parliament by the Parliamentary Secretary in answer to a question by Lord Charles Beresford said that at the present practically all British merchant vessels were armed and provided with hand grenades.

Besides, it has been openly admitted by the English press that the *Lusitania* on previous voyages repeatedly carried large quantities of war material. On the present voyage the *Lusitania* carried 5,400 cases of ammunition, while the rest of her cargo also consisted chiefly of contraband.

If England, after repeated official and unofficial warnings, considered herself able to declare that that boat ran no risk and thus light-heartedly assumed responsibility for the human life on board a steamer which, owing to its armament and cargo was liable to destruction, the German Government, in spite of its heartfelt sympathy for the loss of American lives, cannot but regret that Americans felt more inclined to trust to English promises rather than to pay attention to the warnings from the German side.

FOREIGN OFFICE.

(*The New York Times*, May 11, 1915.)

**No. 45. German statement, May 11, 1915, in regard to the treatment of neutral vessels in the war zone.**

*The German Minister for Foreign Affairs to the American Ambassador.*

First.—The Imperial German Government has naturally no intention of causing to be attacked by submarines or aircraft such

neutral ships of commerce in the zone of naval warfare, more definitely described in the notice of the German Admiralty staff of February 4 last, as have been guilty of no hostile act. On the contrary, the most definite instructions have repeatedly been issued to German war vessels to avoid attacks on such ships under all circumstances. Even when such ships have contraband of war on board they are dealt with by submarines solely according to the rules of international law applying to prize warfare.

Second.—Should a neutral ship nevertheless come to harm through German submarines or aircraft on account of an unfortunate (X) [mistake?] in the above-mentioned zone of naval warfare, the German Government will unreservedly recognize its responsibility therefor. In such a case it will express its regrets and afford damages without first instituting a prize court action.

Third.—It is the custom of the German Government as soon as the sinking of a neutral ship in the above-mentioned zone of naval warfare is ascribed to German war vessels to institute an immediate investigation into the cause. If grounds appear thereby to be given for association of such a hypothesis, the German navy places itself in communication with the interested neutral Government so that the latter may also institute an investigation. If the German Government is thereby convinced that the ship has been destroyed by Germany's war vessels, it will not delay in carrying out the provisions of Paragraph 2 above. In case the German Government, contrary to the viewpoint of the neutral Government, is not convinced by the result of the investigation, the German Government has already on several occasions declared itself ready to allow the question to be decided by an international investigation commission, according to Chapter 3 of The Hague Convention of October 18, 1907, for the peaceful solution of international disputes.

(*The New York Times*, May 12, 1915.)

**No. 46. First American note, May 13, 1915, regarding the loss of American lives and the injury to American commerce incidental to the naval warfare.**

*The Secretary of State to the American Ambassador at Berlin.*

Please call on the Minister of Foreign Affairs and after reading to him this communication leave with him a copy.

In view of recent acts of the German authorities in violation of American rights on the high seas which culminated in the torpedoing and sinking of the British steamship *Lusitania* on May 7, 1915, by which over 100 American citizens lost their lives, it is clearly wise and desirable that the Government of the United States and the Imperial German Government should come to a clear and full understanding as to the grave situation which has resulted.

The sinking of the British passenger steamer *Falaba* by a German submarine on March 28, through which Leon C. Thrasher, an American citizen, was drowned; the attack on April 28 on the American vessel *Cushing* by a German aeroplane; the torpedoing on May 1 of the American vessel *Gulflight* by a German submarine, as a result of which two or more American citizens met their death; and, finally, the torpedoing and sinking of the steamship *Lusitania*, constitute a series of events which the Government of the United States has observed with growing concern, distress, and amazement.

Recalling the humane and enlightened attitude hitherto assumed by the Imperial German Government in matters of international right, and particularly with regard to the freedom of the seas; having learned to recognize the German views and the German influence in the field of international obligation as always engaged upon the side of justice and humanity; and having understood the instructions of the Imperial German Government to its naval commanders to be upon the same plane of humane action prescribed by the naval codes of other nations, the Government of the United States was loath to believe—it cannot now bring itself to believe—that these acts, so absolutely contrary to the rules, the practices, and the spirit of modern warfare, could have the countenance or sanction of that great Government. It feels it to be its duty, therefore, to address the Imperial German Government concerning them with the utmost frankness and in the earnest hope that it is not mistaken in expecting action on the part of the Imperial German Government which will correct the unfortunate impressions which have been created and vindicate once more the position of that Government with regard to the sacred freedom of the seas.

The Government of the United States has been apprised that the Imperial German Government considered themselves to be obliged by the extraordinary circumstances of the present war and the measures adopted by their adversaries in seeking to cut Germany off from all commerce, to adopt methods of retaliation which go much beyond the ordinary methods of warfare at sea, in the proclamation of a war zone from which they have warned neutral ships to keep away. This Government has already taken occasion to inform the Imperial German Government that it cannot admit the adoption of such measures or such a warning of danger to operate as in any degree an abbreviation of the rights of American shipmasters or of American citizens bound on lawful errands as passengers on merchant ships of belligerent nationality; and that it must hold the Imperial German Government to a strict accountability for any infringement of those rights, intentional or incidental. It does not understand the Imperial German Government to question those rights. It assumes, on the contrary, that the Imperial Government accept, as of course, the rule that the lives of noncombatants, whether they be of neutral citizenship or citizens of one of the nations at war, cannot lawfully or rightfully be put in jeopardy by the capture or destruction of an unarmed merchantman, and recognize also, as all other nations do, the obligation to take the usual precaution of visit and search to ascertain whether a suspected merchantman is in fact of belligerent nationality or is in fact carrying contraband of war under a neutral flag.

The Government of the United States, therefore, desires to call the attention of the Imperial German Government with the utmost earnestness to the fact that the objection to their present method of attack against the trade of their enemies lies in the practical impossibility of employing submarines in the destruction of commerce without disregarding those rules of fairness, reason, justice, and humanity, which all modern opinion regards as imperative. It is practically impossible for the officers of a submarine to visit a merchantman at sea and examine her papers and cargo. It is practically impossible for them to make a prize of her; and, if they cannot put a prize crew on board of her, they cannot sink her without leaving

her crew and all on board of her to the mercy of the sea in her small boats. These facts it is understood the Imperial German Government frankly admit. We are informed that in the instances of which we have spoken time enough for even that poor measure of safety was not given, and in at least two of the cases cited not so much as a warning was received. Manifestly submarines cannot be used against merchantmen, as the last few weeks have shown, without an inevitable violation of many sacred principles of justice and humanity.

American citizens act within their indisputable rights in taking their ships and in traveling wherever their legitimate business calls them upon the high seas, and exercise those rights in what should be the well-justified confidence that their lives will not be endangered by acts done in clear violation of universally acknowledged international obligations, and certainly in the confidence that their own Government will sustain them in the exercise of their rights.

There was recently published in the newspapers of the United States, I regret to inform the Imperial German Government, a formal warning, purporting to come from the Imperial German Embassy at Washington, addressed to the people of the United States, and stating, in effect, that any citizen of the United States who exercised his right of free travel upon the seas would do so at his peril if his journey should take him within the zone of waters within which the Imperial German navy was using submarines against the commerce of Great Britain and France, notwithstanding the respectful but very earnest protest of his Government, the Government of the United States. I do not refer to this for the purpose of calling the attention of the Imperial German Government at this time to the surprising irregularity of a communication from the Imperial German Embassy at Washington addressed to the people of the United States through the newspapers, but only for the purpose of pointing out that no warning that an unlawful and inhumane act will be committed can possibly be accepted as an excuse or palliation for that act or as an abatement of the responsibility for its commission.

Long acquainted as this Government has been with the character of the Imperial German Government and with the high principles of equity by which they have in the past been actuated and guided, the Government of the United States cannot believe that the commanders of the vessels which committed these acts of lawlessness did so except under a misapprehension of the orders issued by the Imperial German naval authorities. It takes it for granted that, at least within the practical possibilities of every such case, the commanders even of submarines were expected to do nothing that would involve the lives of noncombatants or the safety of neutral ships, even at the cost of failing of their object of capture or destruction. It confidently expects, therefore, that the Imperial German Government will disavow the acts of which the Government of the United States complains, that they will make reparation so far as reparation is possible for injuries which are without measure, and that they will take immediate steps to prevent the recurrence of anything so obviously subversive of the principles of warfare for which the Imperial German Government have in the past so wisely and so firmly contended.

The Government and people of the United States look to the Imperial German Government for just, prompt, and enlightened action in this vital matter with the greater confidence because the United

States and Germany are bound together not only by special ties of friendship but also by the explicit stipulations of the treaty of 1828 between the United States and the Kingdom of Prussia.

Expressions of regret and offers of reparation in case of the destruction of neutral ships sunk by mistake, while they may satisfy international obligations, if no loss of life results, cannot justify or excuse a practice, the natural and necessary effect of which is to subject neutral nations and neutral persons to new and immeasurable risks.

The Imperial German Government will not expect the Government of the United States to omit any word or any act necessary to the performance of its sacred duty of maintaining the rights of the United States and its citizens and of safeguarding their free exercise and enjoyment.

BRYAN.

(*Dip. Corr.* 75-77.)

**No. 47. British memorandum, May 20, 1915, in reference to the detention of American ships and cargoes.\***

First.—There are at the present moment three American ships detained in this country. Two of them are cotton ships, which are dealt with below. The third is the steamer *Joseph W. Fordney*. This vessel, with a cargo of foodstuffs consigned to E. Klingener at Malmo (Sweden), was brought into Kirkwall on April 8. She had been sighted by His Majesty's ships about ten miles from the Norwegian coast and had thereupon endeavored, with the evident desire to evade search, to escape rapidly into Norwegian territorial waters, but without success.

On the vessel's arrival in Kirkwall, inquiries were at once addressed to his Majesty's Minister at Stockholm, with regard to the consignee of the cargo, and a reply was received to the effect that no person of that name could be identified at Malmo, though there was a person of that name who resided at Gothenburg, and was manager of the Gothenburg branch of Hugo Hartvig, and who had stated that the consignments addressed to him on board the *Joseph W. Fordney* were intended for storage in Malmo.

Second.—The suspicious conduct of the vessel in endeavoring to elude His Majesty's patrols and the known connections of the consignee of her cargo have tended to confirm other evidence, which has come to the knowledge of His Majesty's Government, that the foodstuffs were in reality destined for Germany. It was accordingly decided that the cargo must be placed in the prize court, and the vessel is at present discharging at Portishead, England, on the completion of which operation she will be released.

His Majesty's Government feel satisfied that in the circumstances of this case undue interference with American interests cannot with reason be imputed to them.

Third.—The number of neutral vessels carrying American cargoes and at present held up is thirty-six. Of these twenty-three carry cargoes of American cotton. The United States Government are aware that since the enforcement of the blockade measures an-

\* The memorandum has a paragraph attached comparing the exports of the United States to belligerent and neutral countries in January and February, 1914, with those in the same months of 1915. An additional table shows an increase in the American exportation of bacon and lard to neutral countries in March, 1915.



nounced in the supplement to *The London Gazette* of the 12th of March, last, His Majesty's Government have acted as regards shipments of American cotton in accordance with the provisions of an arrangement arrived at in collaboration with representatives of the American cotton interests. The terms of the arrangement are as follows:

A.—All cotton for which contracts, sale and freight engagements already have been made before March 2 is to be allowed free transit or bought at the contract price if stopped, provided the ship sails not later than the 31st of March.

B.—Similar treatment is to be accorded all cotton insured before the 2d of March, provided it is put aboard not later than the 16th of March.

C.—All shipments of cotton claiming the above protection are to be declared before sailing, and documents produced and certificates obtained from Consular officers or other authorities fixed by the Government.

Fourth.—In accepting this scheme, which it may be noted applies to shipments of cotton for a neutral destination only, the principal representatives of the American cotton interests described it to his Majesty's Ambassador at Washington as conceding all that the American interests could properly ask. It was never suggested that vessels or cargoes with an enemy destination should be allowed to proceed. His Majesty's Government were, moreover, given to understand that the provisions of the arrangement were acceptable to the United States Government.

Fifth.—It is intended shortly to furnish a statement showing precisely what cargoes or portions of cargoes his Majesty's Government have dealt with under the above arrangement, and as regards those which they have decided to purchase at the contract price under the terms of Paragraph A of the arrangement, direct discussions have already been opened with the special representatives of the American parties interested in London.

Sixth.—A considerable portion of the cotton has already been sold, and arrangements are being made for handing over the proceeds to the parties entitled to receive the total value, as a first installment of the completed transaction. It is obvious that all these arrangements require some time for adjustment. Meanwhile, it is not believed that the original owners can, as appears to be apprehended, be suffering acutely by the delay of full payment. It is to be presumed that in accordance with the customs of trade, the owners draw bills to the value of their goods before or at the time of shipment, and, if such bills have been negotiated in the usual way, it is difficult to understand why the drawers should be put to inconvenience on this account, at least before the date when the bills fall due.

Seventh.—On an impartial review of the facts it will, his Majesty's Government feel sure, be admitted that no arbitrary interference with American interests has, in regard to these cargoes, occurred, seeing that his Majesty's Government has acted throughout in conformity with the terms of an arrangement agreeable to the interests concerned, and that United States citizens will suffer no pecuniary loss.

Eighth.—As regards other American cargoes, or portions of cargoes, which have been placed in the prize court, his Majesty's Government resort to this measure in cases where either the goods con-

cerned are contraband or there is evidence that, although ostensibly consigned to a person in neutral countries, they are in reality destined to the enemy in contravention of the rules of blockade. The right to submit such cases to the public investigation of a judicial tribunal is one which his Majesty's Government cannot forego, and they feel convinced that the enlightened opinion in the United States cannot adversely criticise their course of action in this respect.

Ninth.—It is true that a number of these cases have been pending in the prize court for some time. This is notably the case in regard to certain vessels carrying large shipments of meat and lard ostensibly consigned to Scandinavian ports. The United States Government are, however, no doubt aware that much of the delay involved in these instances is due to the fact that the negotiations have been carried on for many weeks with a representative of the principal American meat packers, for an arrangement designated to limit importation into neutral countries adjacent to Germany, to quantities actually required in those countries for bona fide home consumption. The American meat packers have demanded as a part of the settlement to be agreed upon, that His Majesty's Government should buy the cargoes of several ships now held up in the prize court. Hence the delay in bringing these cases to adjudication.

The negotiations for an amicable settlement have, unfortunately, come to a standstill owing to the exorbitant terms insisted upon by the representative of the American packers. This stage having now been reached His Majesty's Government have decided to go on with the prize court proceedings in these cases, and it is not expected that a decision will be much longer delayed.

Tenth.—It may finally be pointed out that repeated complaint, as to injury suffered generally by American trade in consequence of interference due to British naval measures, derives little substance from the published American trade returns. A table of figures taken from these returns and showing the amount of recent American trade with Germany and with neutral countries supplying Germany, is annexed hereto. It certainly tends to disprove any contention that American trade with neutral countries has recently suffered. It will be seen that whereas American exports to Germany and Austria in February, 1915, fell by \$21,500,000, as compared with the same month in 1914, American exports to Scandinavia, Holland and Italy rose by the enormous figure of \$61,100,000.

Eleventh.—Similar figures for the month of March have not yet reached His Majesty's Government, but they have received statistics for that month of the value of exports and imports through New York, as issued by the Collector of the Port, and while pointing out a large increase in the value of exports in 1915, compared with those of 1914, as shown in the tables annexed, they desire especially to call attention to a separate statement indicating the increase in the amount of the export to Scandinavian and Dutch ports of two commodities only—bacon and lard. These figures show that as against 1,253 boxes of bacon and 9,816 tierces of lard exported to the ports noted in the above countries in March, 1914, there were exported in March, 1915, 32,222 boxes of bacon and 95,676 tierces of lard.

Twelfth.—His Majesty's Government consider that the abnormal increase in supplies imported by neutral countries, as shown in these statistics, alone justifies their assumption as to the ultimate destination of many items in cargoes consigned to one or the other of the

countries in question in the vessels which they have detained, but they would call attention to the fact that it is only when they have believed themselves to be in possession of conclusive evidence of the enemy destination of a cargo that they have seized such a cargo, and that American interests, as for instance in the case of cotton, have received especially sympathetic consideration.

(*The New York Times*, May 21, 1915.)

**No. 48. Statement of the Secretary of State, May 21, 1915, regarding an error in No. 47.**

The foreign trade advisers' attention has been called to the statement of the Foreign Office of Great Britain, published in this morning's papers, an extract from which follows:

"Fourth.—In accepting this scheme, which, it may be noted, applies to shipments of cotton for a neutral destination only, the principal representative of the American interests described it to his Majesty's Ambassador at Washington as conceding all that the American interests could properly ask. It was never suggested that vessels or cargoes with an enemy destination should be allowed to proceed. His Majesty's Government were, moreover, given to understand that the provisions of the arrangements were acceptable to the United States Government."

The plan referred to is the one which was entered into between the cotton shippers of this country and the British Embassy, a portion of which is quoted in the statement of the British Foreign Office.

Without discussing at this time the statement that "it was never suggested that vessels or cargoes with an enemy destination should be allowed to proceed," the foreign trade advisers, who informally and unofficially represented the cotton shippers in the negotiations which led to the so-called cotton arrangement, state that it was distinctly understood between Sir Arthur Cecil Spring-Rice, the British Ambassador, and Robert F. Rose, the foreign trade adviser conducting this discussion on behalf of the American cotton exporters, that nothing done by the foreign trade advisers should be regarded as official, and that everything done was to be considered as informal and unofficial, and in no way binding the United States Government to any arrangement reached, or be construed as a recognition of the Order in Council to be issued or the Declaration of March 1, which has been issued. This statement was made to the British Ambassador on March 3, when the first conference in the matter was held, was repeated at each subsequent conference, and each time the absolute assurance from the British Ambassador was received that, in acting for the cotton shippers in any way, the foreign trade advisers were to be regarded as not representing the United States Government in any manner.

(*The New York Times*, May 22, 1915.)

**No. 49. Statement of the British Embassy, May 21, 1915, correcting the error in No. 47.**

The terms of the arrangement quoted in the British statement as telegraphed were arrived at in London between a private representative of the American cotton interests in London and British officials in London. The reference to the British Ambassador in Paragraph 4 is, therefore, an error.

The arrangement in question formed the subject of conversations between the Ambassador and representatives of the cotton interests in this country. There never was any question of a formal and official understanding between the United States Government and the British Embassy.

(*The New York Times*, May 22, 1915.)

**No. 50. First German note, May 28, 1915, regarding the loss of American lives and the injury to American commerce incidental to the naval warfare.\***

*The Minister for Foreign Affairs to the American Ambassador.*

The undersigned has the honor to make the following reply to the note of His Excellency, Mr. James W. Gerard, Ambassador of the United States of America, dated the fifteenth instant, on the subject of the impairment of many American interests by the German submarine war.

The Imperial Government has subjected the statements of the Government of the United States to a careful examination and has the lively wish on its part also to contribute in a convincing and friendly manner to clear up any misunderstandings which may have entered into the relations of the two Governments through the events mentioned by the American Government.

With regard firstly to the cases of the American steamers *Cushing* and *Gulflight*, the American Embassy has already been informed that it is far from the German Government to have any intention of ordering attacks by submarines or flyers on neutral vessels in the zone which have not been guilty of any hostile act; on the contrary the most explicit instructions have been repeatedly given the German armed forces to avoid attacking such vessels. If neutral vessels have come to grief through the German submarine war during the past few months by mistake, it is a question of isolated and exceptional cases which are traceable to the misuse of flags by the British Government in connection with carelessness or suspicious actions on the part of the captains of the vessels. In all cases where a neutral vessel through no fault of its own has come to grief through the German submarine or flyers according to the facts as ascertained by the German Government, this Government has expressed its regret at the unfortunate occurrence and promised indemnification where the facts justified it. The German Government will treat the cases of the American steamers *Cushing* and *Gulflight* according to the same principles. An investigation of these cases is in progress. Its results will be communicated to the Embassy shortly. The investigation might, if thought desirable, be supplemented by an International Commission of Inquiry, pursuant to Title Three of The Hague Convention of October 18, 1907, for the pacific settlement of international disputes.

In the case of the sinking of the English steamer *Falaba*, the commander of the German submarine had the intention of allowing passengers and crew ample opportunity to save themselves.

It was not until the captain disregarded the order to lay to and took to flight, sending up rocket signals for help, that the German commander ordered the crew and passengers by signals and megaphone to leave the ship within 10 minutes. As a matter of fact he

\* See No. 46.

allowed them 23 minutes and did not fire the torpedo until suspicious steamers were hurrying to the aid of the *Falaba*.

With regard to the loss of life when the British passenger steamer *Lusitania* was sunk, the German Government has already expressed its deep regret to the neutral Governments concerned that nationals of those countries lost their lives on that occasion. The Imperial Government must state for the rest the impression that certain important facts most directly connected with the sinking of the *Lusitania* may have escaped the attention of the Government of the United States. It therefore considers it necessary in the interest of the clear and full understanding aimed at by either Government primarily to convince itself that the reports of the facts which are before the two Governments are complete and in agreement.

The Government of the United States proceeds on the assumption that the *Lusitania* is to be considered as an ordinary unarmed merchant vessel. The Imperial Government begs in this connection to point out that the *Lusitania* was one of the largest and fastest English commerce steamers, constructed with Government funds as auxiliary cruisers, and is expressly included in the navy list published by British Admiralty. It is moreover known to the Imperial Government from reliable information furnished by its officials and neutral passengers that for some time practically all the more valuable English merchant vessels have been provided with guns, ammunition and other weapons, and reinforced with a crew specially practiced in manning guns. According to reports at hand here, the *Lusitania* when she left New York undoubtedly had guns on board which were mounted under decks and masked.

The Imperial Government furthermore has the honor to direct the particular attention of the American Government to the fact that the British Admiralty by a secret instruction of February of this year advised the British merchant marine not only to seek protection behind neutral flags and markings, but even when so disguised to attack German submarines by ramming them. High rewards have been offered by the British Government as a special incentive for the destruction of the submarines by merchant vessels, and such rewards have already been paid out. In view of these facts, which are satisfactorily known to it, the Imperial Government is unable to consider English merchant vessels any longer as "undefended territory" in the zone of maritime war designated by the Admiralty Staff of the Imperial German navy, the German commanders are consequently no longer in a position to observe the rules of capture otherwise usual and with which they invariably complied before this. Lastly, the Imperial Government must specially point out that on her last trip the *Lusitania*, as on earlier occasions, had Canadian troops and munitions on board, including no less than 5,400 cases of ammunition destined for the destruction of brave German soldiers who are fulfilling with self-sacrifice and devotion their duty in the service of the Fatherland. The German Government believes that it acts in just self-defence when it seeks to protect the lives of its soldiers by destroying ammunition destined for the enemy with the means of war at its command. The English steamship company must have been aware of the dangers to which passengers on board the *Lusitania* were exposed under the circumstances. In taking them on board in spite of this the company quite deliberately tried to use the lives of American citizens as protection for the ammunition

carried, and violated the clear provisions of American laws which expressly prohibit, and provide punishment for, the carrying of passengers on ships which have explosives on board. The company thereby wantonly caused the death of so many passengers. According to the express report of the submarine commander concerned, which is further confirmed by all other reports, there can be no doubt that the rapid sinking of the *Lusitania* was primarily due to the explosion of the cargo of ammunition caused by the torpedo. Otherwise, in all human probability, the passengers of the *Lusitania* would have been saved.

The Imperial Government holds the facts recited above to be of sufficient importance to recommend them to a careful examination by the American Government. The Imperial Government begs to reserve a final statement of its position with regard to the demands made in connection with the sinking of the *Lusitania* until a reply is received from the American Government, and believes that it should recall here that it took note with satisfaction of the proposals of good offices submitted by the American Government in Berlin and London with a view to paving the way for a *modus vivendi* for the conduct of maritime war between Germany and Great Britain. The Imperial Government furnished at that time ample evidence of its good will by its willingness to consider these proposals. The realization of these proposals failed, as is known, on account of their rejection by the Government of Great Britain.

The undersigned requests His Excellency, the Ambassador, to bring the above to the knowledge of the American Government and avails himself of the opportunity to renew, etc.

VON JAGOW.

(*Dip. Corr.—leaflet.*)

**No. 51. German note, June 1, 1915, in reference to attacks on the "Gulflight" and the "Cushing."**

*The Minister for Foreign Affairs to the American Ambassador.*

Referring to the note of May 28, the undersigned has the honor to inform His Excellency the American (*sic*) Ambassador of the United States of America, Mr. James W. Gerard, that the examination undertaken on the part of the German Government concerning the American steamers *Gulflight* and *Cushing* has led to the following conclusions:

In regard to the attack on the steamer *Gulflight*, the commander of a German submarine saw on the afternoon of May 1, in the vicinity of the Scilly Islands, a large merchant steamer coming in his direction which was accompanied by two smaller vessels. These latter took such position in relation to the steamer that they formed a regulation safeguard against submarines; moreover, one of them had a wireless apparatus, which is not usual with small vessels. From this it evidently was a case of English convoy vessels. Since such vessels are frequently armed, the submarine could not approach the steamer on the surface of the water without running the danger of destruction. It was, on the other hand, to be assumed that the steamer was of considerable value to the British Government, since it was so guarded. The commander could see no neutral markings on it of any kind—that is, distinctive marks painted on the free-board recognizable at a distance, such as are now usual on neutral

ships in the English zone of naval warfare. In consequence he arrived at the conclusion from all the circumstances that he had to deal with an English steamer, submerged, and attacked.

The torpedo came in the immediate neighborhood of one of the convoy ships, which at once rapidly approached the point of firing; that the submarine was forced to go to a great depth to avoid being rammed. The conclusion of the commander that an English convoy ship was concerned was in this way confirmed. That the attacked steamer carried the American flag was first observed at the moment of firing the shot. The fact that the steamship was pursuing a course which led neither to nor from America was a further reason why it did not occur to the commander of the submarine that he was dealing with an American steamship.

Upon scrutiny of the time and place of the occurrence described, the German Government has become convinced that the attacked steamship was actually the American steamship *Gullflight*. There can be no doubt, according to the attendant circumstances, that the attack is to be attributed to an unfortunate accident, and not to the fault of the commander. The German Government expresses its regrets to the Government of the United States concerning this incident, and declares itself ready to furnish full recompense for the damage thereby sustained by American citizens. It is left to the discretion of the American Government to present a statement of this damage, or, if doubt may arise over individual points, to designate an expert who would have to determine, together with a German expert, the amount of damage.

It has not yet been possible by means of an inquiry to clear up fully the case of the American ship *Cushing*. Official reports available report only one merchant ship attacked by a German flying machine in the vicinity of Nordhind Lightship. The German aviator was forced to consider the vessel as hostile because it carried no flag, and, further, because of no recognizable neutral markings. The attack of four bombs was, of course, not aimed at any American ship.

However, that the ship attacked was the American steamer *Cushing* is possible, considering the time and place of the occurrence. Nevertheless, the German Government accordingly requests of the American Government that it communicate to the German Government the material which was submitted for judgment, in order that, with this as a basis, a further position can be taken in the matter.

The undersigned leaves it to the Ambassador to bring the foregoing to the immediate attention of his Government, and takes this opportunity to renew to him the assurance of his most distinguished consideration.

VON JAGOW, *Minister for Foreign Affairs.*

(*The New York Times*, June 5, 1915.)

No. 52. Second German note, June 7, 1915, in regard to the "William P. Frye."\*

*The Minister for Foreign Affairs to the American Ambassador.*

The undersigned has the honor to make the following reply to the note of His Excellency, Mr. James W. Gerard, Ambassador of the United States of America, dated April 30, 1915, Foreign Office

\* See Nos. 37, 39 and 43.

number 3,291, on the subject of the sinking of the American sailing vessel *William P. Frye* by the German auxiliary cruiser *Prinz Eitel Friedrich*:

The German Government cannot admit that, as the American Government assumes, the destruction of the sailing vessel mentioned constitutes a violation of the treaties concluded between Prussia and the United States at an earlier date and now applicable to the relations between the German Empire and the United States, or of the American rights derived therefrom. For these treaties did not have the intention of depriving one of the contracting parties engaged in war of the right of stopping the supply of contraband to his enemy when he recognizes the supply of such as detrimental to his military interests.

On the contrary, article XIII of the Prussian-American treaty of July 11, 1799, expressly reserves to the party at war the right to stop the carrying of contraband and to detain the contraband. It follows, then, that if it cannot be accomplished in any other way the stopping of the supply may in the extreme case be effected by the destruction of the contraband and of the ship carrying it. As a matter of course, the obligation of the party at war to pay compensation to the parties interested of the neutral contracting party remains in force whatever be the manner of stopping the supply.

According to general principles of international law, any exercises of the right of control over the trade in contraband is subject to the decision of the prize courts, even though such right may be restricted by special treaties.

At the beginning of the present war Germany, pursuant to these principles, established by law prize jurisdiction for cases of the kind under consideration. The case of the *William P. Frye* is likewise subject to the German prize jurisdiction, for the Prussian-American treaties mentioned contain no stipulation as to how the amount of the compensation, provided by article XIII of the treaties, cited, is to be fixed.

The German Government therefore complies with its treaty obligations to a full extent when the prize courts instituted by it in accordance with international law proceed in pursuance to the treaty stipulation and thus award the American interested an equitable indemnity. There would, therefore, be no foundation for a claim of the American Government unless the prize court should not grant indemnity in accordance with the treaty; in such event, however, the German Government would not hesitate to arrange for equitable indemnity notwithstanding.

For the rest, prize proceedings of the case of the *Frye* are indispensable, apart from the American claims, for the reason that other claims of the neutral and enemy interested parties are to be considered in the matter.

As was stated in the note of April 4 last, the prize court should have to decide the question whether the destruction of the ship and cargo was legal, whether and under what conditions the property sunk was liable to confiscation, and to whom and in what amount indemnity is to be paid, provided application therefor is received.

Since the decision of the prize court must first be awaited before any further position is taken by the German Government, the simplest way for the American interested parties to settle their claims would



be to enter them in the competent records in accordance with the provision of the German code of prize proceedings.

The undersigned begs to suggest that the ambassador bring the above to the knowledge of his Government and avail himself, etc.

VON JAGOW.

(*The New York Times*, June 11, 1915.)

**No. 53. Second American note, June 9, 1915, regarding the loss of American lives and the injury to American commerce incidental to the naval warfare.\***

*The Secretary of State ad interim to the American Ambassador at Berlin.*

You are instructed to deliver textually the following note to the Minister of Foreign Affairs:

In compliance with Your Excellency's request I did not fail to transmit to my Government immediately upon their receipt your note of May 28 in reply to my note of May 15, and your supplementary note of June 1, setting forth the conclusions so far as reached by the Imperial German Government concerning the attacks on the American steamers *Cushing* and *Gulflight*. I am now instructed by my Government to communicate the following in reply:

The Government of the United States notes with gratification the full recognition by the Imperial German Government, in discussing the cases of the *Cushing* and the *Gulflight*, of the principle of the freedom of all parts of the open sea to neutral ships and the frank willingness of the Imperial German Government to acknowledge and meet its liability where the fact of attack upon neutral ships "which have not been guilty of any hostile act" by German aircraft or vessels of war is satisfactorily established; and the Government of the United States will in due course lay before the Imperial German Government, as it requests, full information concerning the attack on the steamer *Cushing*.

With regard to the sinking of the steamer *Falaba*, by which an American citizen lost his life, the Government of the United States is surprised to find the Imperial German Government contending that an effort on the part of a merchantman to escape capture and secure assistance alters the obligation of the officer seeking to make the capture in respect of the safety of the lives of those on board the merchantman, although the vessel had ceased her attempt to escape when torpedoed. These are not new circumstances. They have been in the minds of statesmen and of international jurists throughout the development of naval warfare, and the Government of the United States does not understand that they have ever been held to alter the principles of humanity upon which it has insisted. Nothing but actual forcible resistance or continued efforts to escape by flight when ordered to stop for the purpose of visit on the part of the merchantman has ever been held to forfeit the lives of her passengers or crew. The Government of the United States, however, does not understand that the Imperial German Government is seeking in this case to relieve itself of liability, but only intends to set forth the circumstances which led the commander of the submarine to allow himself to be hurried into the course which he took.

Your Excellency's note, in discussing the loss of American lives

\* See Nos. 46 and 50.

resulting from the sinking of the steamship *Lusitania*, adverts at some length to certain information which the Imperial German Government has received with regard to the character and outfit of that vessel, and Your Excellency expresses the fear that this information may not have been brought to the attention of the Government of the United States. It is stated in the note that the *Lusitania* was undoubtedly equipped with masked guns, supplied with trained gunners and special ammunition, transporting troops from Canada, carrying a cargo not permitted under the laws of the United States to a vessel also carrying passengers, and serving, in virtual effect, as an auxiliary to the naval forces of Great Britain. Fortunately these are matters concerning which the Government of the United States is in a position to give the Imperial German Government official information. Of the facts alleged in Your Excellency's note, if true, the Government of the United States would have been bound to take official cognizance in performing its recognized duty as a neutral power and in enforcing its national laws. It was its duty to see to it that the *Lusitania* was not armed for offensive action, that she was not serving as a transport, that she did not carry a cargo prohibited by the statutes of the United States, and that, if in fact she was a naval vessel of Great Britain, she should not receive clearance as a merchantman; and it performed that duty and enforced its statutes with scrupulous vigilance through its regularly constituted officials. It is able, therefore, to assure the Imperial German Government that it has been misinformed. If the Imperial German Government should deem itself to be in possession of convincing evidence that the officials of the Government of the United States did not perform these duties with thoroughness the Government of the United States sincerely hopes that it will submit that evidence for consideration.

Whatever may be the contentions of the Imperial German Government regarding the carriage of contraband of war on board the *Lusitania* or regarding the explosion of that material by the torpedo, it need only be said that in the view of this Government these contentions are irrelevant to the question of the legality of the methods used by the German naval authorities in sinking the vessel.

But the sinking of passenger ships involves principles of humanity which throw into the background any special circumstances of detail that may be thought to affect the cases, principles which lift it, as the Imperial German Government will no doubt be quick to recognize and acknowledge, out of the class of ordinary subjects of diplomatic discussion or of international controversy. Whatever be the other facts regarding the *Lusitania*, the principal fact is that a great steamer, primarily and chiefly a conveyance for passengers, and carrying more than a thousand souls who had no part or lot in the conduct of the war, was torpedoed and sunk without so much as a challenge or a warning, and that men, women, and children were sent to their death in circumstances unparalleled in modern warfare. The fact that more than one hundred American citizens were among those who perished made it the duty of the Government of the United States to speak of these things and once more, with solemn emphasis, to call the attention of the Imperial German Government to the grave responsibility which the Government of the United States conceives that it has incurred in this tragic occurrence, and to the indisputable principle upon which that respon-

sibility rests. The Government of the United States is contending for something much greater than mere rights of property or privileges of commerce. It is contending for nothing less high and sacred than the rights of humanity, which every Government honors itself in respecting and which no Government is justified in resigning on behalf of those under its care and authority. Only her actual resistance to capture or refusal to stop when ordered to do so for the purpose of visit could have afforded the commander of the submarine any justification for so much as putting the lives of those on board the ship in jeopardy. This principle the Government of the United States understands the explicit instructions issued on August 3, 1914, by the Imperial German Admiralty to its commanders at sea to have recognized and embodied, as do the naval codes of all other nations, and upon it every traveler and seaman had a right to depend. It is upon this principle of humanity as well as upon the law founded upon this principle that the United States must stand.

The Government of the United States is happy to observe that Your Excellency's note closes with the intimation that the Imperial German Government is willing, now as before, to accept the good offices of the United States in an attempt to come to an understanding with the Government of Great Britain by which the character and conditions of the war upon the sea may be changed. The Government of the United States would consider it a privilege thus to serve its friends and the world. It stands ready at any time to convey to either Government any intimation or suggestion the other may be willing to have it convey and cordially invites the Imperial German Government to make use of its services in this way at its convenience. The whole world is concerned in anything that may bring about even a partial accommodation of interests or in any way mitigate the terrors of the present distressing conflict.

In the meantime, whatever arrangement may happily be made between the parties to the war, and whatever may in the opinion of the Imperial German Government have been the provocation or the circumstantial justification for the past acts of its commanders at sea, the Government of the United States confidently looks to see the justice and humanity of the Government of Germany vindicated in all cases where Americans have been wronged or their rights as neutrals invaded.

The Government of the United States therefore very earnestly and very solemnly renews the representations of its note transmitted to the Imperial German Government on the 15th of May, and relies in these representations upon the principles of humanity, the universally recognized understandings of international law, and the ancient friendship of the German nation.

The Government of the United States cannot admit that the proclamation of a war zone from which neutral ships have been warned to keep away may be made to operate as in any degree an abbreviation of the rights either of American shipmasters or of American citizens bound on lawful errands as passengers on merchant ships of belligerent nationality. It does not understand the Imperial German Government to question those rights. It understands it, also, to accept as established beyond question the principle that the lives of noncombatants cannot lawfully or rightfully be put in jeopardy by the capture or destruction of an unresisting mer-

chantman, and to recognize the obligation to take sufficient precaution to ascertain whether a suspected merchantman is in fact of belligerent nationality or is in fact carrying contraband of war under a neutral flag. The Government of the United States therefore deems it reasonable to expect that the Imperial German Government will adopt the measures necessary to put these principles into practice in respect of the safeguarding of American lives and American ships, and asks for assurances that this will be done.

ROBERT LANSING.

(*Dip. Corr.—leaflet.*)

**No. 54. British memorandum, June 17, 1915, in reference to the treatment of American commerce.\***

*The Secretary of State for Foreign Affairs ad interim to the American Ambassador.*

1. His Majesty's Government have on various occasions, and notably in the communication which was addressed to the United States Ambassador on March 15 last, given assurances to the United States Government that they would make it their first aim to minimize the inconvenience which must inevitably be caused to neutral commerce from the existence of a state of war at sea, and in particular from the measures taken by the allied Governments for the restriction of the enemies' oversea trade. In view of the representation and complaints made to this department by the Ambassador from time to time as to the peculiar hardships alleged to have been wrongly inflicted on American trade and shipping by the operation of those measures, his Majesty's Government desire to offer the following observations respecting the manner in which they have consistently endeavored to give practical effect to those assurances.

2. It will be recalled that at the moment when his Majesty's Government announced their measures against enemy commerce, they declared their intention to refrain altogether from the exercise of the right to confiscate ships or cargoes, which belligerents had always previously claimed in respect to breaches of blockade; that, under Article 1 of the enactment of March 11 it was expressly provided that any person claiming to be interested in goods placed in the prize court in pursuance of the provision of that enactment, might forthwith issue a writ against the proper officer of the Crown, the object being to confer upon claimants the right to institute proceedings without waiting for the writ of the Procurator General, and thus to remove all possible cause of legitimate grievance on account of delay; and that, finally, a pacific assurance was given to the United States Government that the instructions to be issued by his Majesty's Government to the fleet and to the customs officials and executive officials concerned, would impress upon them the duty of acting with the utmost despatch consistent with the object in view and of showing in every case such consideration for neutrals as might be compatible with that object, namely, to prevent vessels carrying goods for or coming from the enemy's territory.

3. The above measures were all designed to alleviate the burdens imposed upon neutral sea-borne commerce in general. Various spe-

\* According to the letter of the American Ambassador transmitting the memorandum, "it is not an answer to the principles set forth in the note . . . of March 30 [No. 36], but merely an explanation of concrete cases and the regulations under which they are dealt with." See No. 61.

cial concessions, over and above those enumerated, have, moreover, been made in favor of United States citizens.

4. Thus his Majesty's Government have acted as regards shipments of American cotton, in accordance with the provisions of an arrangement arrived at in direct collaboration with representatives of the American cotton interests. In accepting this scheme the principal representative of those interests described it as conceding all that American interests could properly ask. The provisions of the arrangement were, as the United States Ambassador is aware, as follows:

"1. All cotton for which contracts of sale and freight engagements have already been made before the 2d March is to be allowed free (or bought at contract price if stopped), provided the ship sails not later than the 31st March.

"2. Similar treatment is to be accorded to all cotton insured before the 2d March, provided it is put on board not later than the 16th March.

"3. All shipments of cotton claiming the above protection are to be declared before sailing, and the documents produced to, and certificates obtained from, consular officers or other authority fixed by the Government."

5. Considerable shipments of cotton have already been dealt with under this arrangement, and in certain cases the dates specified have been extended in favor of American shippers. The Board of Trade have already paid a sum exceeding 450,000 pounds sterling to various American claimants, and all claims are being and will continue to be paid as rapidly as they are presented and the proofs of title can be checked. If in some cases progress has been delayed, this has been due to the fact which has seriously embarrassed His Majesty's Government—that a number of consignments, for which the American shippers had specifically invoked the protection of the arrangement, are now claimed by Swedish and Dutch firms, whose title of ownership, notwithstanding the action of the American shippers, appears in some cases to be valid, and in others has led to the issue of writs in the prize court.

6. It has been explicitly acknowledged by the special representatives of the American claimants, who have been in constant and direct communication with the Board of Trade, that all the claims so far submitted under the cotton arrangement have been settled with the utmost promptitude, so soon as the production of the necessary documents by the claimants allowed of this being done. There is, at the present moment, no claim before his Majesty's Government that has not been paid, and the sums so paid over are already considerably in excess of the amounts realized by the sale of the goods.

7. As regards the more general allegation of delay in dealing with cases of detained cargoes, the following facts and figures may be quoted:

The total number of vessels which, having cleared from United States ports since the initiation of the retaliatory measures against German trade, are still detained in United Kingdom ports is twenty-seven; of this number eight are discharging cotton which his Majesty's Government has agreed to purchase under the above arrangement. Of the remaining nineteen vessels, seven are free to depart as soon as the items of their cargo placed in the prize court have been discharged. The other twelve, of which three only are American

ships, are detained pending inquiries as to suspicious consignments; and particulars as to the dates and approximate causes of detention are furnished in the accompanying list. It will be observed that eight have been detained for a period of less than a week, and three for a period of less than a fortnight, while the detention of one is due to the difficulties in regard to transit across Sweden and Russia.

8. His Majesty's Government remain convinced that, on an impartial review of the facts, it will be admitted that no arbitrary interference with American interests has, in regard to cotton cargoes, occurred; while if due regard be paid to the enormous volume of American and neutral shipping which is continually engaged in the transatlantic trade, the figures and dates quoted in the preceding paragraph will emphasize the restricted nature of any interference which has taken place, and the close attention with which the officials concerned have adhered to their instructions to act in all cases with expedition and with every possible consideration for neutrals.

9. Since His Majesty's Government have been compelled to adopt their present measures against German commerce, they have given special consideration to the question of avoiding as far as possible unnecessary damage to the interests of neutrals in regard to the export of goods of German origin, and here again liberal concessions have been made to United States citizens. Under the rules enacted on the 11th of March provision is made for the investigation of all neutral claims respecting such goods in the prize court, and it is obvious that these claims can receive due and equitable consideration most properly before a judicial tribunal. Nevertheless, in deference to the express desire of the United States Government, arrangements were made toward the end of March whereby United States citizens, who might desire to import goods of German origin via a neutral port, were enabled to produce proof of payment to His Majesty's Embassy at Washington. If such proof were deemed satisfactory, His Majesty's Government gave an undertaking that the goods concerned should not be interfered with in transit, and the American importer was freed from the necessity of submitting his claim to the prize court in London for adjudication. A few days later His Majesty's Government further agreed to recognize the neutral ownership of goods of enemy origin even if not paid for before the 1st March, provided they were the subject of a f. o. b. contract of earlier date, and had arrived at a neutral port before the 15th March.

10. Special treatment has also been accorded to cargoes of particular products destined for the United States and stated to be indispensable for the industries of the country, and, in notes addressed to the United States Ambassador in April and May, undertakings were given not to interfere during transit with certain cargoes of dyestuffs, potash, and German beet seed.

11. When it became apparent that large quantities of enemy goods were still passing out through neutral countries his Majesty's Government felt it necessary to fix a definite date after which such shipments must cease to enjoy the special immunity, theretofore granted, from liability to being placed in the prize court. It had been observed that a large increase had taken place in the number of vessels sailing from neutral countries to America, and one of the principal lines of steamships advertised a daily in place of a weekly service. In such circumstances it appeared scarcely possible that goods of enemy origin bought and paid for prior to the 1st March should not have

already been shipped to their destination. First June was accordingly fixed as the date after which the privilege allowed in the case of such shipments should cease; but once more a special favor was granted by extending the date in exceptional cases to the 15th June.

12. Importers in the United States having now had three months in which to clear off their purchases in enemy territory, his Majesty's Government trust that, in presence of the circumstances enumerated, the United States Government will acknowledge the great consideration which has been shown to American interests.

13. Nevertheless a fresh appeal has now been made to his Majesty's Government that shipments of American-owned goods of enemy origin, if paid for before the beginning of March, should be allowed to be shipped without molestation after the 15th June. The appeal is based principally upon the contentions, (a) that insufficient time has already elapsed; (b) that no mention of a time limit is made in the enactment of the 11th March; (c) that the proofs of ownership required by His Majesty's Government are of an exacting nature and involve much time for preparation.

14. The first contention (a) has already been dealt with. As regards (b) and (c) it is true that the enactment of the 11th March contains no mention of a time limit. But it seems to be overlooked that the time limit had been fixed only for the special immunity granted as an exception from that enactment. It was as a friendly concession to American interests that his Majesty's Government agreed to an investigation of claims outside the prize court. As for the exacting nature of the proofs required by his Majesty's Government, experience has shown that such proofs were necessary.

15. In deference, however, to the renewed representations of the United States Ambassador, his Majesty's Government have given further directions that in all such cases, as may have been specially submitted through the British Embassy at Washington or to his Majesty's Government direct on or before June 15 and passed, the goods shall be allowed to proceed without interference, if shipped from a neutral port on the conditions already laid down, notwithstanding the fact that shipment may not have been made before June 15.

16. His Majesty's Government will also be prepared hereafter to give special consideration to cases presented to them and involving particular hardships, if the goods concerned are required for neutral Governments or municipalities, or in respect of works or public utility, and where payment can be shown to have been made before March 1, 1915.

17. With the above exceptions, his Majesty's Government regret they cannot continue to deal through the diplomatic channel with individual cases, but they would again point out that special provision is made for the consideration of such cases in the prize court.

18. Complaints have not infrequently been made that undue delay occurs in dealing with American cargoes in the prize court. An interesting comment on this subject was made by the President of the prize court in the case of the cargo ex-steamship *Ogeechee* on the 14th instant. His lordship, according to the transcript from the official shorthand writer's notes, made the following observations:

"It is a very extraordinary thing that, when the Crown are ready to go on the claimants come here and say, 'We cannot proceed for six weeks.' Some day toward the end of last term I had a row of eminent counsel in front pressing me to fix a case at once. I fixed

it very nearly at once — that is to say, the second day of the following term. They all came and said: 'We want an adjournment for six weeks.'

19. The Solicitor General hereupon remarked: "If I might say so on that, one of the reasons I applied to-day on behalf of the Crown that the matter should be dealt with as soon as possible is for that very reason. There has been such a strong desire on the part of America and American citizens that there should be no delay, but one finds, in fact, the delay comes from there."

20. The President then stated: "I know that. I do not know what the explanation is, but I am anxious that there should be no delay."

21. It is true that a number of cases, principally relating to cargoes which, though ostensibly consigned to a person in a neutral country, are in reality believed to be destined for the enemy, have been pending in the prize court for some time. The United States Government are aware that most of these cargoes consist of meat and lard, and that much of the delay in bringing these cargoes to adjudication was due to the fact that negotiations were being carried on for many weeks with a representative of the principal American meat packers, for an amicable settlement out of court. When at length, owing to the failure of the negotiations, his Majesty's Government decided that they would continue the prize court proceedings and had at the request of the claimants fixed the earliest possible date for the hearing, counsel for the latter asked for an adjournment in their interests, despite the fact that the Crown was, by his own admission, ready to proceed.

22. His Majesty's Government are earnestly desirous of removing all causes of avoidable delay in dealing with American cargoes and vessels which may be detained, and any specific inquiries or representations which may be made by the United States Government in regard to particular cases will always receive the most careful consideration, and all information which can be afforded without prejudice to prize court proceedings will be readily communicated, but they can scarcely admit that on the basis of actual facts, any substantial grievance on the part of American citizens is justified or can be sustained, and they, therefore, confidently appeal to the opinion of the United States Government as enlightened by this memorandum.

(*The New York Times*, June 25, 1915.)

**No. 55. Third American note, June 24, 1915, in regard to the "William P. Frye."\***

*The Secretary of State to the American Ambassador at Berlin.*

You are instructed to present the following note to the German Minister of Foreign Affairs:

I have the honor to inform your Excellency that I duly communicated to my Government your note of the 7th instant on the subject of the claim presented in my note of April 3 last on behalf of the owners and captain of the American sailing vessel *William P. Frye* in consequence of her destruction by the German auxiliary cruiser *Prinz Eitel Friedrich*.

In reply I am instructed by my Government to say that it has carefully considered the reasons given by the Imperial German Gov-

\* See Nos. 37, 39, 43 and 52.



ernment for urging that this claim should be passed upon by the German prize court instead of being settled by direct diplomatic discussion between the two Governments, as proposed by the Government of the United States, and that it regrets to find that it cannot concur in the conclusions reached by the Imperial German Government.

As pointed out in my last note to you on this subject, dated April 30, the Government of the United States has considered that the only question under discussion was the method which should be adopted for ascertaining the amount of the indemnity to be paid under an admitted liability, and it notes with surprise that in addition to this question the Imperial German Government now desires to raise some questions as to the meaning and effect of the treaty stipulations under which it has admitted its liability.

If the Government of the United States correctly understands the position of the Imperial German Government as now presented, it is that the provisions of Article 13 of the Treaty of 1799 between the United States and Prussia, which is continued in force by the Treaty of 1828, justified the commander of the *Prinz Eitel Friedrich* in sinking the *William P. Frye*, although making the Imperial German Government liable for the damages suffered in consequence, and that inasmuch as the treaty provides no specific method for ascertaining the amount of indemnity to be paid, that question must be submitted to the German prize court for determination.

The Government of the United States, on the other hand, does not find in the treaty stipulation mentioned any justification for the sinking of the *Frye*, and does not consider that the German prize court has any jurisdiction over the question of the amount of indemnity to be paid by the Imperial German Government on account of its admitted liability for the destruction of an American vessel on the high seas.

You state in your note of the 7th instant, that Article 13 of the above-mentioned Treaty of 1799 "expressly reserves to the party at war the right to stop the carrying of contraband and to detain the contraband; it follows then that if it cannot be accomplished in any other way the stopping of the supply may be in the extreme case effected by the destruction of the contraband and of the ship carrying it."

The Government of the United States cannot concur in this conclusion. On the contrary, it holds that these treaty provisions do not authorize the destruction of a neutral vessel in the circumstances. By its express terms the treaty prohibits even the detention of a neutral vessel carrying contraband if the master of the vessel is willing to surrender the contraband. Article 13 provides: "In the case supposed of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be permitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage."

In this case the admitted facts show that, pursuant to orders from the commander of the German cruiser, the master of the *Frye* undertook to throw overboard the cargo of that vessel, but that before the work of delivering out the cargo was finished the vessel with the cargo was sunk by order of the German commander.

For these reasons, even if it be assumed, as your Excellency has done, that the cargo was contraband, your contention that the destruction of the vessel was justified by the provisions of Article 13, does not seem to be well founded. The Government of the United States has not thought it necessary in the discussion of this case to go into the question of the contraband or non-contraband character of the cargo. The Imperial German Government has admitted that this question makes no difference so far as its liability for damages is concerned, and the result is the same so far as the justification for the sinking of the vessel is concerned. As shown above, if we assume that the cargo was contraband, the master of the *Frye* should have been allowed to deliver it out, and the vessel should have been allowed to proceed on her voyage.

On the other hand, if we assume that the cargo was non-contraband, the destruction either of the cargo or the vessel could not be justified in the circumstances of this case under any accepted rule of international law.

Attention is also called to the provisions of Article 12 of the Treaty of 1785 between the United States and Prussia, which, like Article 13 of the Treaty of 1799, was continued in force by Article 12 of the Treaty of 1828. So far as the provisions of Article 12 of the Treaty of 1785 apply to the question under consideration, they are as follows:

"If one of the contracting parties should be engaged in war with any other power, the free intercourse and commerce of the subjects or citizens of the party remaining neutral with the belligerent powers shall not be interrupted. On the contrary, in that case, as in full peace, the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, in so much that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party, although such things belong to an enemy of the other."

It seems clear to the Government of the United States, therefore, that whether the cargo of the *Frye* is regarded as contraband or as noncontraband, the destruction of the vessel was, as stated in my previous communication on this subject, "a violation of the obligations imposed upon the Imperial German Government under existing treaty stipulations between the United States and Prussia."

For these reasons the Government of the United States must disagree with the contention which it understands is now made by the Imperial German Government, that an American vessel carrying contraband may be destroyed without liability or accountability beyond the payment of such compensation for damages as may be fixed by a German prize court. The issue thus presented arises on a disputed interpretation of treaty provisions, the settlement of which requires direct diplomatic discussion between the two Governments and cannot properly be based upon the decision of the German prize court, which is in no way conclusive or binding upon the Government of the United States.

Moreover, even if no disputed question of treaty interpretation was involved, the admission by the Imperial German Government of its liability for damages for sinking the vessel would seem to make it unnecessary, so far as this claim is concerned, to ask the prize court to decide "whether the destruction of the ship and cargo was legal,

and whether and under what conditions the property sunk was liable to confiscation," which, you state in your note dated June 7, are questions which should be decided by the prize court. In so far as these questions relate to the cargo, they are outside of the present discussion, because, as pointed out in my previous note to you on the subject dated April 30, "the claim under discussion does not include damages for the destruction of the cargo."

The real question between the two Governments is what reparation must be made for a breach of treaty obligations, and that is not a question which falls within the jurisdiction of a prize court.

In my note on the subject, the Government of the United States requested that "full reparation be made by the Imperial German Government for the destruction of the *William P. Frye*." Reparation necessarily includes an indemnity for the actual pecuniary loss sustained, and the Government of the United States takes this opportunity to assure the Imperial German Government that such an indemnity, if promptly paid, will be accepted as satisfactory reparation, but it does not rest with a prize court to determine what reparation should be made, or what reparation would be satisfactory to the Government of the United States.

Your Excellency states in your note of June 7 that in the event the prize court should not grant indemnity in accordance with treaty requirements, the German Government would not hesitate to arrange for equitable indemnity, but it is also necessary that the Government of the United States should be satisfied with the amount of the indemnity, and it would seem to be more appropriate and convenient that an arrangement for equitable indemnity should be agreed upon now, rather than later. The decision of the prize court, even on the question of the amount of indemnity to be paid, would not be binding or conclusive on the Government of the United States.

The Government of the United States also dissents from the view expressed in your note that "there would be no foundation for a claim of the American Government unless the prize courts should not grant indemnity in accordance with the treaty." The claim presented by the American Government is for an indemnity for a violation of a treaty, in distinction from an indemnity in accordance with the treaty, and therefore is a matter for adjustment by direct diplomatic discussion between the two Governments, and is in no way dependent upon the action of a German prize court.

For the reasons above stated the Government of the United States cannot recognize the propriety of submitting the claim presented by it on behalf of the owners and captain of the *Frye* to the German prize court for settlement.

The Government of the United States is not concerned with any proceedings which the Imperial German Government may wish to take on "other claims of neutral and enemy interested parties" which have not been presented by the Government of the United States, but which you state in your note of June 7 make prize court proceedings in this case indispensable, and it does not perceive the necessity for postponing the settlement of the present claim pending the consideration of those other claims by the prize court.

The Government of the United States, therefore, suggests that the Imperial German Government reconsider the subject in the light of these considerations, and, because of the objections against resorting to the prize court, the Government of the United States

renews its former suggestion that an effort be made to settle this claim by direct diplomatic negotiations.

LANSING.

(*The New York Times*, June 29, 1915.)

**No. 56. Second German note, July 8, 1915, regarding the loss of American lives and the injury to American commerce incidental to the naval warfare.\***

*The Minister for Foreign Affairs to the American Ambassador.*

The undersigned has the honor to make the following reply to his Excellency Ambassador Gerard to the note of the 10th ultimo re the impairment of American interests by the German submarine war:

The Imperial Government learned with satisfaction from the note how earnestly the Government of the United States is concerned in seeing the principles of humanity realized in the present war. Also this appeal finds ready echo in Germany, and the Imperial Government is quite willing to permit its statements and decisions in the present case to be governed by the principles of humanity just as it has done always.

The Imperial Government welcomed with gratitude when the American Government, in the note of May 15, itself recalled that Germany had always permitted itself to be governed by the principles of progress and humanity in dealing with the law of maritime war.

Since the time when Frederick the Great negotiated with John Adams, Benjamin Franklin, and Thomas Jefferson the Treaty of Friendship and Commerce of September 9, 1785, between Prussia and the Republic of the West, German and American statesmen have, in fact, always stood together in the struggle for the freedom of the seas and for the protection of peaceable trade.

In the international proceedings which since have been conducted for the regulation of the laws of maritime war, Germany and America have jointly advocated progressive principles, especially the abolishment of the right of capture at sea and the protection of the interests of neutrals.

Even at the beginning of the present war the German Government immediately declared its willingness, in response to proposals of the American Government, to ratify the Declaration of London and thereby subject itself in the use of its naval forces to all the restrictions provided therein in favor of neutrals.

Germany likewise has been always tenacious of the principle that war should be conducted against the armed and organized forces of an enemy country, but that the enemy civilian population must be spared as far as possible from the measures of war. The Imperial Government cherishes the definite hope that some way will be found when peace is concluded, or perhaps earlier, to regulate the law of maritime war in a manner guaranteeing the freedom of the seas, and will welcome it with gratitude and satisfaction if it can work hand in hand with the American Government on that occasion.

If in the present war the principles which should be the ideal of the future have been traversed more and more, the longer its duration, the German Government has no guilt therein. It is known to the American Government how Germany's adversaries, by completely paralyzing peaceable traffic between Germany and neutral countries,

\* See Nos. 46, 50, 51, 53.

have aimed from the very beginning and with increasing lack of consideration at the destruction not so much of the armed forces as the life of the German nation, repudiating in doing so all the rules of international law and disregarding all rights of neutrals.

On November 3, 1914, England declared the North Sea a war area, and by planting poorly anchored mines and by the stoppage and capture of vessels, made passage extremely dangerous and difficult for neutral shipping, thereby actually blockading neutral coasts and ports contrary to all international law. Long before the beginning of submarine war England practically completely intercepted legitimate neutral navigation to Germany also. Thus Germany was driven to a submarine war on trade.

On November 14, 1914, the English Premier declared in the House of Commons that it was one of England's principal tasks to prevent food for the German population from reaching Germany via neutral ports. Since March 1 England has been taking from neutral ships without further formality all merchandise proceeding to Germany, as well as all merchandise coming from Germany, even when neutral property. Just as it was also with the Boers, the German people is now to be given the choice of perishing from starvation with its women and children or of relinquishing its independence.

While our enemies thus loudly and openly proclaimed war without mercy until our utter destruction, we were conducting a war in self-defense for our national existence and for the sake of peace of an assured permanency. We have been obliged to adopt a submarine warfare to meet the declared intentions of our enemies and the method of warfare adopted by them in contravention of international law.

With all its efforts in principle to protect neutral life and property from damage as much as possible, the German Government recognized unreservedly in its memorandum of February 4 that the interests of neutrals might suffer from the submarine warfare. However, the American Government will also understand and appreciate that in the fight for existence, which has been forced upon Germany by its adversaries and announced by them, it is the sacred duty of the Imperial Government to do all within its power to protect and save the lives of German subjects. If the Imperial Government were derelict in these its duties, it would be guilty before God and history of the violation of those principles of highest humanity which are the foundation of every national existence.

The case of the *Lusitania* shows with horrible clearness to what jeopardizing of human lives the manner of conducting war employed by our adversaries leads. In the most direct contradiction of international law all distinctions between merchantmen and war vessels have been obliterated by the order to British merchantmen to arm themselves and to ram submarines, and the promise of rewards therefor, and neutrals who use merchantmen as travelers thereby have been exposed in an increasing degree to all the dangers of war.

If the Commander of the German submarine which destroyed the *Lusitania* had caused the crew and passengers to take to the boats before firing a torpedo this would have meant the sure destruction of his own vessel. After the experiences in sinking much smaller and less seaworthy vessels it was to be expected that a mighty ship like the *Lusitania* would remain above water long enough, even after the torpedoing, to permit passengers to enter the ship's boats. Circumstances of a very peculiar kind, especially the presence on board of

large quantities of highly explosive materials defeated this expectation.

In addition it may be pointed out that if the *Lusitania* had been spared, thousands of cases of munitions would have been sent to Germany's enemies and thereby thousands of German mothers and children robbed of breadwinners.

In the spirit of friendship wherewith the German nation has been imbued toward the Union (United States) and its inhabitants since the earliest days of its existence, the Imperial Government will always be ready to do all it can during the present war also to prevent the jeopardizing of lives of American citizens.

The Imperial Government, therefore, repeats the assurances that American ships will not be hindered in the prosecution of legitimate shipping and the lives of American citizens in neutral vessels shall not be placed in jeopardy.

In order to exclude any unforeseen dangers to American passenger steamers, made possible in view of the conduct of maritime war by Germany's adversaries, German submarines will be instructed to permit the free and safe passage of such passenger steamers when made recognizable by special markings and notified a reasonable time in advance. The Imperial Government, however, confidently hopes that the American Government will assume to guarantee that these vessels have no contraband on board, details of arrangements for the unhampered passage of these vessels to be agreed upon by the naval authorities of both sides.

In order to furnish adequate facilities for travel across the Atlantic for American citizens, the German Government submits for consideration a proposal to increase the number of available steamers by installing in passenger service a reasonable number of neutral steamers under the American flag, the exact number to be agreed upon under the same condition as the above-mentioned American steamers.

The Imperial Government believes it can assume that in this manner adequate facilities for travel across the Atlantic Ocean can be afforded American citizens. There would, therefore, appear to be no compelling necessity for American citizens to travel to Europe in time of war on ships carrying an enemy flag. In particular the Imperial Government is unable to admit that American citizens can protect an enemy ship through the mere fact of their presence on board.

Germany merely followed England's example when she declared part of the high seas an area of war. Consequently, accidents suffered by neutrals on enemy ships in this area of war cannot well be judged differently from accidents to which neutrals are at all times exposed at the seat of war on land, when they betake themselves into dangerous localities in spite of previous warnings. If, however, it should not be possible for the American Government to acquire an adequate number of neutral passenger steamers, the Imperial Government is prepared to interpose no objections to the placing under the American flag by the American Government of four enemy passenger steamers for passenger traffic between North America and England. Assurances of "free and safe" passage for American passenger steamers would then extend to apply under the identical pro-conditions to these formerly hostile passenger steamers.

The President of the United States has declared his readiness, in a way deserving of thanks, to communicate and suggest proposals to

the Government of Great Britain with particular reference to the alteration of maritime war. The Imperial Government will always be glad to make use of the good offices of the President, and hopes that his efforts in the present case as well as in the direction of the lofty ideal of the freedom of the seas, will lead to an understanding.

The undersigned requests the Ambassador to bring the above to the knowledge of the American Government, and avails himself of the opportunity to renew to his Excellency the assurance of his most distinguished consideration.

VON JAGOW.

(*The New York Times*, July 10, 1915.)

**No. 57. Summary of American "caveat," July 14, 1915, against British prize court procedure.**

*The Secretary of State to the American Ambassador at London.*

In view of differences which are understood to exist between the two Governments as to the principles of law applicable in prize court proceedings in cases involving American interests, and in order to avoid any misunderstanding as to the attitude of the United States in regard to such proceedings, you are instructed to inform the British Government that, in so far as the interests of American citizens are concerned, the Government of the United States will insist upon their rights under the principles and rules of international law, as hitherto established, governing neutral trade in time of war, without limitation or impairment by Orders in Council or other municipal legislation by the British Government, and will not recognize the validity of prize court proceedings taken under restraints imposed by British municipal law in derogation of the rights of American citizens under international law.

(*The New York Times*, August 4, 1915.)

**No. 58. Paraphrase of American note, July 15, 1915, protesting against the seizure of the cargo of the "Neches."**

*The Secretary of State to the American Ambassador at London.*

Ambassador Page is informed that it has been brought to the attention of the department that the steamship *Neches*, of American register, sailing from Rotterdam for the United States, carrying a general cargo, after being detained at the Downs, was brought to London, where it was required by the British authorities to discharge cargo, the property of American citizens.

It appears that the ground advanced to sustain this action is that the goods originated, in part at least, in Belgium, and fall, therefore, within the provisions of Paragraph 4 of the Order in Council of March 11, which stipulates that every merchant vessel sailing from a port other than a German port, carrying goods of enemy origin, may be required to discharge such goods in a British or allied port.

Ambassador Page is instructed in this case to reiterate the position of the Government of the United States as set forth in the department's instruction of March 30, 1915, with respect to the Order in Council mentioned, the international invalidity of which the Government of the United States regards as plainly illustrated by the present instance of the seizure of American-owned goods passing from the neutral port of Rotterdam to a neutral port of the United States,

merely because the goods came originally from territory in the possession of an enemy of Great Britain.

Mr. Page is also instructed to inform the Foreign Office that the legality of this seizure cannot be admitted and that, in the view of the Government of the United States, it violates the right of the citizens of one neutral to trade with those of another, as well as with those of belligerents, except in contraband or in violation of a legal blockade of an enemy seaport; and that the right of American owners of goods to bring them out of Holland, in due course, in neutral ships must be insisted upon by the United States, even though such goods may have come originally from the territories of enemies of Great Britain. He is directed further to insist upon the desire of this Government that goods taken from the *Neches*, which are the property of American citizens, should be expeditiously released to be forwarded to their destination, and to request that he be advised of the British Government's intended course in this matter at the earliest moment convenient to that Government.

(*The New York Times*, August 4, 1915.)

**No. 59. German memorandum, July 15, 1915, in regard to the "Nebraskan."**

*The Minister for Foreign Affairs to the American Ambassador.*

The German Government received from newspaper reports the intelligence that the American steamer *Nebraskan* had been damaged by a mine or torpedo on the southwest coast of Ireland. It therefore started a thorough investigation of the case without delay, and from the result of the investigation it has become convinced that the damage to the *Nebraskan* was caused by an attack by a submarine.

On the evening of May 25 last the submarine met a steamer bound westward without a flag and no neutral markings on her freeboard, about 65 nautical miles west of Fastnet Rock. No appliance of any kind for the illumination of the flag or markings was to be seen. In the twilight, which had already set in, the name of the steamer was not visible from the submarine. Since the commander of the submarine was obliged to assume from his wide experience in the area of maritime war that only English steamers, and no neutral steamers, traversed the war area without flag and markings, he attacked the vessel with a torpedo, in the conviction that he had an enemy vessel before him. Some time after the shot the commander saw that the vessel had in the meantime hoisted the American flag. As a consequence, he, of course, refrained from any further attack. Since the vessel remained afloat, he had no occasion to concern himself further with the boats which had been launched.

It results from this that without a doubt that attack on the steamer *Nebraskan* was not meant for the American flag, nor is it traceable to any fault on the part of the commander of the German submarine, but is to be considered an unfortunate accident. The German Government expresses its regret at the occurrence to the Government of the United States of America and declares its readiness to make compensation for the damage thereby sustained by American citizens.

(*The New York Times*, July 16, 1915.)



**No. 60. Third American note, July 21, 1915, regarding the loss of American lives and the injury to American commerce incidental to the naval warfare.\***

*The Secretary of State to the American Ambassador at Berlin.*

You are instructed to deliver textually the following Note to the Minister for Foreign Affairs:

The note of the Imperial German Government dated the 8th of July, 1915, has received the careful consideration of the Government of the United States, and it regrets to be obliged to say that it has found it very unsatisfactory, because it fails to meet the real differences between the two Governments, and indicates no way in which the accepted principles of law and humanity may be applied in the grave matter in controversy, but proposes, on the contrary, arrangements for a partial suspension of those principles which virtually set them aside.

The Government of the United States notes with satisfaction that the Imperial German Government recognizes without reservation the validity of the principles insisted on in the several communications which this Government has addressed to the Imperial German Government with regard to its announcement of a war zone and the use of submarines against merchantmen on the high seas—the principle that the high seas are free, that the character and cargo of a merchantman must first be ascertained before she can lawfully be seized or destroyed, and that the lives of noncombatants may in no case be put in jeopardy unless the vessel resists or seeks to escape after being summoned to submit to examination, for a belligerent act of retaliation is per se an act beyond the law, and the defense of an act as retaliatory is an admission that it is illegal.

The Government of the United States is, however, keenly disappointed to find that the Imperial German Government regards itself as in large degree exempt from the obligation to observe these principles, even where neutral vessels are concerned, by what it believes the policy and practice of the Government of Great Britain to be in the present war with regard to neutral commerce. The Imperial German Government will readily understand that the Government of the United States cannot discuss the policy of the Government of Great Britain with regard to neutral trade except with that Government itself, and that it must regard the conduct of other belligerent Governments as irrelevant to any discussion with the Imperial German Government of what this Government regards as grave and unjustifiable violations of the rights of American citizens by German naval commanders.

Illegal and inhuman acts, however justifiable they may be thought to be, against an enemy who is believed to have acted in contravention of law and humanity, are manifestly indefensible when they deprive neutrals of their acknowledged rights, particularly when they violate the right to life itself. If a belligerent cannot retaliate against an enemy without injuring the lives of neutrals, as well as their property, humanity, as well as justice and a due regard for the dignity of neutral powers, should dictate that the practice be discontinued. If persisted in it would in such circumstances constitute an unpardonable offense against the sovereignty of the neutral nation affected.

The Government of the United States is not unmindful of the

\*See Nos. 46, 50, 51, 53, 56

extraordinary conditions created by this war or of the radical alterations of circumstance and method of attack produced by the use of instrumentalities of naval warfare which the nations of the world cannot have had in view when the existing rules of international law were formulated, and it is ready to make every reasonable allowance for these novel and unexpected aspects of war at sea; but it cannot consent to abate any essential or fundamental right of its people because of a mere alteration of circumstance. The rights of neutrals in time of war are based upon principle, not upon expediency, and the principles are immutable. It is the duty and obligation of belligerents to find a way to adapt the new circumstances to them.

The events of the past two months have clearly indicated that it is possible and practicable to conduct such submarine operations as have characterized the activity of the Imperial German Navy within the so-called war zone in substantial accord with the accepted practices of regulated warfare. The whole world has looked with interest and increasing satisfaction at the demonstration of that possibility by German naval commanders. It is manifestly possible, therefore, to lift the whole practice of submarine attack above the criticism which it has aroused and remove the chief causes of offense.

In view of the admission of illegality made by the Imperial Government when it pleaded the right of retaliation in defense of its acts, and in view of the manifest possibility of conforming to the established rules of naval warfare, the Government of the United States cannot believe that the Imperial Government will longer refrain from disavowing the wanton act of its naval commander in sinking the *Lusitania* or from offering reparation for the American lives lost, so far as reparation can be made for a needless destruction of human life by an illegal act.

The Government of the United States, while not indifferent to the friendly spirit in which it is made, cannot accept the suggestion of the Imperial German Government that certain vessels be designated and agreed upon which shall be free on the seas now illegally proscribed. The very agreement would, by implication, subject other vessels to illegal attack, and would be a curtailment and therefore an abandonment of the principles for which this Government contends, and which in times of calmer counsels every nation would concede as of course.

The Government of the United States and the Imperial German Government are contending for the same great object, have long stood together in urging the very principles upon which the Government of the United States now so solemnly insists. They are both contending for the freedom of the seas. The Government of the United States will continue to contend for that freedom, from whatever quarter violated, without compromise and at any cost. It invites the practical co-operation of the Imperial German Government at this time, when co-operation may accomplish most and this great common object be most strikingly and effectively achieved.

The Imperial German Government expresses the hope that this object may be in some measure accomplished even before the present war ends. It can be. The Government of the United States not only feels obliged to insist upon it, by whomsoever violated or ignored, in the protection of its own citizens, but is also deeply interested in seeing it made practicable between the belligerents themselves, and holds itself ready at any time to act as the common friend who may be privileged to suggest a way.

In the meantime the very value which this Government sets upon the long and unbroken friendship between the people and Government of the United States and the people and Government of the German nation impels it to press very solemnly upon the Imperial German Government the necessity for a scrupulous observance of neutral rights in this critical matter. Friendship itself prompts it to say to the Imperial Government that repetition by the commanders of German naval vessels of acts in contravention of those rights must be regarded by the Government of the United States, when they affect American citizens, as deliberately unfriendly. LANSING.

(*The New York Times*, July 24, 1915.)

**No. 61. British note, July 23, 1915, replying to the American note of March 30, in regard to British violation of neutral rights (No. 36).**

*The Secretary of State for Foreign Affairs to the American Ambassador.*

1. On the 2d of April your Excellency handed to me a copy of a communication containing the criticisms of the United States Government on the measures we have been constrained to take on account of the menace to peaceful commerce resulting from the German submarine policy. This communication has received the most careful consideration of his Majesty's Government.

2. I fully appreciate the friendly spirit and the candor which are shown in the communication, and, replying in the same spirit, I trust that I may be able to convince your Excellency, and also the Administration at Washington, that the measures we have announced are not only reasonable and necessary in themselves, but constitute no more than an adaptation of the old principles of blockade to the peculiar circumstances with which we are confronted.

3. I need scarcely dwell on the obligation incumbent upon the Allies to take every step in their power to overcome their common enemy, in view of the shocking violation of the recognized rules and principles of civilized warfare of which he has been guilty during the present struggle. Your Excellency's attention has already been drawn to some of these proceedings in the memorandum which I handed to you on the 19th February. Since that time Lord Bryce's report, based on evidence carefully sifted by legal experts, describing the atrocities committed in Belgium; the poisoning of wells in German Southwest Africa, the use of poisonous gases against the troops in Flanders, and, finally, the sinking of the *Lusitania* without any opportunity to passengers and noncombatants to save their lives, have shown how indispensable it is that we should leave unused no justifiable method of defending ourselves.

4. Your Excellency will remember that in my notes of the 13th and 15th March I explained that the allied Governments intended to meet the German attempt to stop all supplies of every kind from leaving or entering British or French ports by themselves intercepting goods going to or from Germany. I read the communication from your Excellency's Government not as questioning the necessity for our taking all the steps open to us to cripple the enemy's trade, but as directed solely to the question of the legitimacy of the particular measures adopted.

5. In the various notes which I have received from your Excel-

lency the right of a belligerent to establish a blockade of the enemy ports is admitted, a right which has obviously no value save in so far as it gives power to a belligerent to cut off the sea-borne exports and imports of his enemy. The contention which I understand the United States Government now put forward is that if a belligerent is so circumstanced that his commerce can pass through adjacent neutral ports as easily as through ports in his own territory, his opponent has no right to interfere, and must restrict his measures of blockade in such a manner as to leave such avenues of commerce still open to his adversary.

This is a contention which his Majesty's Government feel unable to accept and which seems to them unsustainable either in point of law or upon principles of international equity. They are unable to admit that a belligerent violates any fundamental principle of international law by applying a blockade in such a way as to cut off the enemy's commerce with foreign countries through neutral ports if the circumstances render such an application of the principles of blockade the only means of making it effective. The Government of the United States indeed intimates its readiness to take into account "the great changes which have occurred in the conditions and means of naval warfare since the rules hitherto governing legal blockade were formulated," and recognizes that "the form of close blockade, with its cordon of ships in the immediate offing of the blockaded ports, is no longer practicable in the face of an enemy possessing the means and opportunity to make an effective defense by the use of submarines, mines, and aircraft."

6. The only question, then, which can arise in regard to the measures resorted to for the purpose of carrying out a blockade upon these extended lines is whether, to use your Excellency's words, they "conform to the spirit and principles of the essence of the rules of war"; and we shall be content to apply this test to the action which we have taken in so far as it has necessitated interference with neutral commerce.

7. It may be noted in this connection that at the time of the civil war the United States found themselves under the necessity of declaring a blockade of some 3,000 miles of coast line, a military operation for which the number of vessels available was at first very small. It was vital to the cause of the United States in that great struggle that they should be able to cut off the trade of the Southern States. The Confederate armies were dependent on supplies from overseas, and those supplies could not be obtained without exporting the cotton wherewith to pay for them.

To cut off this trade the United States could only rely upon a blockade. The difficulties confronting the Federal Government were in part due to the fact that neighboring neutral territory afforded convenient centres from which contraband could be introduced into the territory of their enemies and from which blockade running could be facilitated. Your Excellency will no doubt remember how, in order to meet this new difficulty, the old principles relating to contraband and blockade were developed, and the doctrine of continuous voyage was applied and enforced, under which goods destined for the enemy territory were intercepted before they reached the neutral ports from which they were to be re-exported.

8. The difficulties which imposed upon the United States the necessity of reshaping some of the old rules are somewhat akin to those

with which the Allies are now faced in dealing with the trade of their enemy. Adjacent to Germany are various neutral countries which afford her convenient opportunities for carrying on her trade with foreign countries. Her own territories are covered by a network of railways and waterways, which enable her commerce to pass as conveniently through ports in such neutral countries as through her own. A blockade limited to enemy ports would leave open routes by which every kind of German commerce could pass almost as easily as through the ports in her own territory. Rotterdam is indeed the nearest outlet for some of the industrial districts of Germany.

9. As a counterpoise to the freedom with which one belligerent may send his commerce across a neutral country without compromising its neutrality, the other belligerent may fairly claim to intercept such commerce before it has reached, or after it has left, the neutral State, provided, of course, that he can establish that the commerce with which he interferes is the commerce of his enemy and not commerce which is bona fide destined for or proceeding from the neutral State. It seems, accordingly, that if it be recognized that a blockade is in certain cases the appropriate method of intercepting the trade of an enemy country, and if the blockade can only become effective by extending it to enemy commerce passing through neutral ports, such an extension is defensible and in accordance with principles which have met with general acceptance.

10. To the contention that such action is not directly supported by written authority, it may be replied that it is the business of writers on international law to formulate existing rules rather than to offer suggestions for their adaptation to altered circumstances, and your Excellency will remember the unmeasured terms in which a group of prominent international lawyers of all nations condemned the doctrine which had been laid down by the Supreme Court of the United States in the case of the *Springbok*, a doctrine upheld by the Claims Commission at Washington in 1873. But the United States and the British Government took a broader view and looked below the surface at the underlying purpose, and the Government of this country, whose nationals were the sufferers by the extension and development of the old methods of blockade made by the United States during the civil war, abstained from all protest against the decisions by which the ships and their cargoes were condemned.

11. What is really important in the general interest is that adaptations of the old rules should not be made unless they are consistent with the general principles upon which an admitted belligerent right is based. It is also essential that all unnecessary injury to neutrals should be avoided. With these conditions, it may be safely affirmed that the steps we are taking to intercept commodities on their way to and from Germany fully comply. We are interfering with no goods with which we should not be entitled to interfere by blockade if the geographical position and the conditions of Germany at present were such that her commerce passed through her own ports. We are taking the utmost possible care not to interfere with commerce genuinely destined for or proceeding from neutral countries. Furthermore, we have tempered the severity with which our measures might press upon neutrals by not applying the rule, which was invariable in the old form of blockade, that ships and goods on their way to or from the blockaded area are liable to condemnation.

12. The communication made by the United States Embassy on

April 2 describes as a novel and quite unprecedented feature of the blockade that it embraces many neutral ports and coasts and has the effect of barring access to them. It does not appear that our measures can be properly so described. If we are successful in the efforts we are making to distinguish between the commerce of neutral and enemy countries there will be no substantial interference with the trade of neutral ports, except in so far as they constitute ports of access to and exit from the enemy territory. There are at this moment many neutral ports which it would be mere affectation to regard as offering facilities only for the commerce of the neutral country in which they are situated, and the only commerce with which we propose to interfere is that of the enemy who seeks to make use of such ports for the purposes of transit to or from his own country.

13. One of the earlier passages in your Excellency's memorandum was to the effect that the sovereignty of neutral nations in time of war suffers no diminution, except in so far as the practice and consent of civilized nations have limited it "by the recognition of certain now clearly determined rights" which it is considered may be exercised by nations at war, and these it defines as the right of capture and condemnation for unneutral service, for the carriage of contraband; and for breach of blockade. I may, however, be permitted to point out that the practice of nations on each of the three subjects mentioned has not at any time been uniform or clearly determined, nor has the practice of any maritime nation always been consistent.

14. There are various particulars in which the exact method of carrying a blockade into effect has from time to time varied. The need of a public notification, the requisite standard of effectiveness, the locality of the blockading squadrons, the right of the individual ship to a preliminary warning that the blockade is in force, and the penalty to be inflicted on a captured blockade runner, are all subjects on which different views have prevailed in different countries and in which the practice of particular countries has been altered from time to time. The one principle which is fundamental and has obtained universal recognition, is that by means of blockade a belligerent is entitled to cut off, by effective means, the sea-borne commerce of his enemy.

15. It is the same with contraband. The underlying principle is well established, but as to the details, there has been a wide variety of views. As for unneutral service — the very term is of such recent introduction that many writers of repute on international law do not mention it — it is possible, in the view of his Majesty's Government in these circumstances, to maintain that the right of a belligerent to intercept the commerce of his enemy is limited in the way suggested in your Excellency's communication.

16. There are certain subsidiary matters dealt with in your Excellency's communication to which I think it well to refer. Among these may be mentioned your citation of the Declaration of Paris, due, no doubt, to the words which occur in the memorandum sent by me to your Excellency on the 1st of March, wherein it was stated that the allied Governments would hold themselves free to detain and take into port ships carrying goods of presumed enemy destination, ownership, or origin, and to our announcement that vessels might be required to discharge goods of enemy ownership as well as those of enemy origin or destination.

17. It is not necessary to discuss the extent to which the second rule of the Declaration of Paris is affected by these measures or whether it could be held to apply at all as between Great Britain and the United States. In actual practice, however, we are not detaining goods on the sole ground that they are the property of an enemy. The purpose of the measures we are taking is to intercept commerce on its way from and to the enemy country. There are many cases in which proof that the goods were enemy property would afford strong evidence that they were of enemy origin or enemy destination, and it is only in such cases that we are detaining them. Where proof of enemy ownership would afford no evidence of such origin or destination we are not in practice detaining the goods.

18. His Majesty's Government have been gratified to observe that the measures which they are enforcing have had no detrimental effect on the commerce of the United States. Figures of recent months show that the increased opportunities afforded by the war for American commerce have more than compensated for the loss of the German and Austrian markets.

19. I trust that in the light of the above explanations it will be realized that the measures to which we have resorted have been not only justified by the exigencies of the case, but can be defended as in accordance with general principles which have commended themselves to the Governments of both countries. I am glad to be able to assure your Excellency that we shall continue to apply these measures with every desire to occasion the least possible amount of inconvenience to persons engaged in legitimate commerce.

I have, &c.

E. GREY.

(*The New York Times*, August 4, 1915.)

**No. 62. Third German note, July 30, 1915, in regard to the "William P. Frye."\***

*The Minister for Foreign Affairs to the American Ambassador.*

The undersigned has the honor to inform his Excellency, Mr. James W. Gerard, Ambassador of the United States of America, in reply to the note of the 26th ultimo, Foreign Office No. 3,990, on the subject of the sinking of the American merchant vessel *William P. Frye* by the German auxiliary cruiser *Prince Eitel Friedrich*, that the points of view brought out in the note have been carefully examined by the Imperial German Government. This examination has led to the following conclusions:

The Government of the United States believes that it is incumbent upon it to take the position that the treaty rights to which America is entitled, as contained in Article 12 of the Prussian-American treaty of amity and commerce of September 10, 1785, and in Article 13 of the Prussian-American treaty of amity and commerce of July 11, 1799, were violated by the sinking of the *William P. Frye*. It interprets these articles as meaning that a merchantman of the neutral contracting party carrying contraband cannot in any circumstances be destroyed by a warship of the belligerent contracting party, and that the sinking of the *William P. Frye* was, therefore, in violation of the treaty, even if her cargo should have consisted of contraband, which it leaves outside of the discussion.

The German Government cannot accept this view. It insists as

\* See Nos. 37, 39, 43, 52, 55.

heretofore that the commander of the German auxiliary cruiser acted in the legal exercise of the right of control of trade in contraband enjoyed by warships of belligerent nations, and that the treaty stipulations mentioned merely oblige the German Government to make compensation for the damage sustained by the American citizens concerned.

It is not disputed by the American Government that according to general principles of international law a belligerent is authorized in sinking neutral vessels under almost any conditions for carrying contraband. As is well known, these principles were laid down in Articles 49 and 50 of the Declaration of London, and were recognized at that time by the duly empowered delegates of all the nations which participated in the conference, including the American delegates, to be declarative of existing international law (see preliminary clause of the Declaration of London); moreover, at the beginning of the present war the American Government proposed to the belligerent nations to ratify the Declaration of London and give its provisions formal validity also.

The German Government has already explained in its note of April 4 last for what reason it considers that the conditions justifying the sinking under international law were present in the case of the *William P. Frye*. The cargo consisted of conditional contraband, the destination of which for the hostile armed forces was to be presumed under the circumstances; no proof to overcome this presumption has been furnished. More than half the cargo of the vessel was contraband, so that the vessel was liable to confiscation. The attempt to bring the American vessel into a German port would have greatly imperiled the German vessel in the given situation of the war, and at any rate practically defeated the success of her further operations. Thus the authority for sinking the vessel was given according to general principles of international law.

There only remains then to be examined the question how far the Prussian-American treaty stipulations modify these principles of international law.

In this connection Article 12 of the Treaty of 1785 provides that in the event of a war between one of the contracting parties with another power, the free commerce and intercourse of the nationals of the party remaining neutral with the belligerent powers shall not be interrupted, but that on the contrary the vessel of the neutral party may navigate freely to and from the ports of the belligerent power even neutralizing enemy goods on board thereof. However, this article merely formulates general rules for the freedom of maritime intercourse and leaves the question of contraband untouched; the specific stipulations on this point are contained in the following article, which is materially identical with Article 13 of the Treaty of 1799 now in force.

The plain intention of Article 13 is to establish a reasonable compromise between the military interests of the belligerent contracting party and the commercial interests of the neutral party. On the one hand the belligerent party is to have the right to prevent the transportation of war supplies to his adversaries even when carried on vessels of the neutral party; on the other hand, the commerce and navigation of the neutral party is to be interfered with as little as possible by the measure necessary for such prevention, and reasonable compensation is to be paid for any inconvenience or damage



which may nevertheless ensue from the proceedings of the belligerent party.

Article 13 recites the following means whereby the belligerent party can prevent the vessels of the neutral party from carrying war supplies to his adversary. The detention of the ship and cargo for such length of time as the belligerent may think necessary; furthermore, the taking over of the war stores for his own use, paying the full value of the same as ascertained at the place of destination. The right of sinking is not mentioned in the treaty, and is, therefore, neither expressly permitted nor expressly prohibited, so that on this point the party stipulations must be supplemented by the general rules of international law. From the meaning and spirit of the treaty it really appears out of the question that it was intended to expect of the belligerent that he should permit a vessel loaded with contraband, for example a shipment of arms and ammunition of decisive importance for the outcome of the war, to proceed unhindered to his enemy when circumstances forbid the carrying of the \* \* into port, if the general rules of international law allow sinking of the vessel.

The remaining stipulations of Article 13 must likewise be considered in this light; they provide that the Captain of a vessel stopped shall be allowed to proceed on his voyage if he delivers out the contraband to the warship which stopped his vessel. For such delivering out cannot, of course, be considered when the ensuing loss of time imperils either the warship herself or the success of her other operations. In the case of the *William P. Frye* the German commander at first tried to have matters settled by the delivery of contraband, but convinced himself of the impracticability of this attempt in that it would expose his ship to attack by whatever superior force of enemy war vessels pursuing him, and was accordingly obliged to determine upon the sinking of the *Frye*. Thus he did not exceed on this point the limits to which he was bound by Article 13.

However, Article 13 asserts itself here to the extent that it founds the obligation to compensate the American citizens affected, whereas according to the general rules of international law the belligerent party does not need to grant compensation for a vessel lawfully sunk. For, if by Article 13, the mere exercise of right of highways makes the belligerent liable for compensation, this must apply a fortiori to the exercise of the right of sinking.

The question whether the German commander acted legally was primarily a subject for the consideration of the German prize courts, according to general principles of international law as laid down, also in Article 1 of The Hague Convention for the establishment of an international prize court and in Article 51 of the Declaration of London. The German Government consequently laid the case of the *William P. Frye* before the competent prize court at Hamburg, as was stated in its note of the 7th ult. This court found by its judgment of the 10th inst. that the cargo of the American vessel, *William P. Frye*, was contraband; that the vessel could not be carried into port, and that the sinking was therefore justified; at the same time the court expressly recognized the validity of the Prussian-American treaty stipulations severally \* \* model for the relations between the German Empire and America, so that the sinking of the ship and cargo, so far as American property, makes the German Empire liable for indemnity. The Prize Court was unable to fix the

\* \* Omissions.

indemnity itself, since it had no data before it, failing the receipt of the necessary details from the parties interested.

It will now be necessary to settle these points in a different way. The German Government suggests as the simplest way that each of the two Governments designate an expert and that the two experts jointly fix the amount of indemnity for the vessel and any American property which may have been sunk with her. The German Government will promptly pay the amount of indemnity thus ascertained; it expressly declares, however, reverting to what has been stated above, that this payment does not constitute satisfaction for the violation of American treaty rights, but a duty or policy of this Government founded on the existing treaty stipulations.

Should the American Government not agree to this manner of settling the matter, the German Government is prepared to submit the difference of opinion as being a question of the interpretation of the existing treaties between Germany and the United States to the tribunal at The Hague, pursuant to Article 38 of The Hague Convention for the pacific settlement of international disputes.

The undersigned begs to suggest that the Ambassador bring the above to the attention of his Government and avails himself, &c.

VON JAGOW.

(*The New York Times, August 5, 1915.*)

**No. 63. British note, July 31, 1915, replying to No. 57.**

*The Secretary of State for Foreign Affairs to the American Ambassador.*

YOUR EXCELLENCY: (1) I have the honor to acknowledge the receipt of the note dated 16th inst., in which you were good enough to communicate to me for the information of his Majesty's Government the opinion held by the Government of the United States, that, in view of differences which they understand to exist between the two countries as to the principles of law applicable in cases before the Prize Court, they could not recognize the validity of proceedings taken in his Majesty's Prize Court in derogation of the rights of citizens of the United States.

(2) I do not understand to what divergence of views as to the principles of law applicable in cases before the Prize Court the Government of the United States refers, for I am not aware of any differences existing between the two countries as to the principles of law applicable in cases before such courts.

3. British prize courts, according to the ancient form of commission under which they sit, are to determine cases which come before them, according to the course of Admiralty and the law of nations and the statutes of rules and regulations for the time being in force in that behalf.

As to the principles applied by the American prize courts, I note that in the case of the *Amy Warwick* (2 Sprague, 123) it was held that prize courts are subject to the instructions of their own sovereign. In the absence of such instructions their jurisdiction and rules of decision are to be ascertained by reference to the known powers of such tribunals and the principles by which they are governed under the public law and the practice of nations. It would appear, therefore, that the principles applied by the prize courts of the two countries are identical.

4. As illustrating further the attitude adopted by the judges of British prize courts toward these two sources of law, the municipal legislation of its sovereign on the one hand and the principles of international law on the other, I should like to refer your Excellency to a classical passage in the judgment of Lord Stowell, in the case of the *Fox*, in which that famous Judge observed in the course of the discussion:

"A question has been stated: What would be the duty of the court under Orders in Council that were repugnant to the law of nations? It has been contended on one side that the court would at all events be bound to enforce the Orders in Council, on the other that the court would be bound to apply the rule of the law of nations adapted to the particular case, in disregard of the Orders in Council.

"This court is bound to administer the law of nations to the subjects of other countries in the different relations in which they may be placed toward this country and its Government. That is what others have a right to demand for their subjects, and to complain if they receive it not. This is its unwritten law, evidenced in the course of its decisions and collected from the common usage of civilized States. At the same time, it is strictly true that by the Constitution of this country the King in Council possesses legislative rights over this court and has power to issue orders and instructions, which it is bound to obey and enforce; and these constitute the written law of this court.

"These two propositions, that the court is bound to administer the law of nations and that it is bound to enforce the King's Orders in Council, are not at all inconsistent with each other, because these orders and instructions are presumed to conform themselves, under the given circumstances, to the principles of its unwritten law. They are either directory applications of those principles to the cases indicated in them—cases which, with all the facts and circumstances belonging to them and which constitute their legal character, could be but imperfectly known to the court itself; or they are positive regulations, consistent with these principles, applying to matters which require more exact and definite rules than those general principles are capable of furnishing.

"The constitution of this court, relatively to the legislative power of the King in Council, is analogous to that of the Courts of Common Law relatively to that of the Parliament of this Kingdom. These courts have their unwritten law, the approved reasons, principles of natural reason and justice; they have likewise the written or statute law in Acts of Parliament, which are directory applications of the same principles to particular subjects or positive regulations consistent with them upon matters which would remain too much at large if they were left to the imperfect information which the courts could extract from mere general speculations.

"What would be the duty of the individuals who preside in these courts if required to enforce an Act of Parliament which contradicted those principles is a question which, I presume, they would not entertain a priori because they will not entertain a priori the supposition that any such will arise. In like manner this court will not let itself loose into speculations as to what would be its duty under such an emergency; because it cannot, without extreme indecency, presume that any such emergency will happen. And it is the less disposed to entertain them because its own observation and experience attest

the general conformity of such orders and instructions to its principles of unwritten law."

5. The above passage has recently been quoted and adopted by the President of the prize court in the case of the *Zamora*, in which Sir S. Evans said: "I make bold to express the hope and belief that the nations of the world need not be apprehensive that Orders in Council will emanate from the Government of this country in such violation of the acknowledged laws of nations that it is conceivable that our prize tribunals, holding the law of nations in reverence, would be called upon to disregard and refuse obedience to the provisions of such orders."

6. In the note which I handed to your Excellency on the 23d of July, I endeavored to convince the Government of the United States, and I trust with success, that the measures that we have felt ourselves compelled to adopt, in consequence of the numerous acts committed by our enemies in violation of the laws of war and the dictates of humanity, are consistent with the principles of international law. The legality of these measures has not yet formed the subject of a decision of the prize court; but I wish to take this opportunity of reminding your Excellency that it is open to any United States citizen whose claim is before the prize court to contend that any Order in Council which may affect his claim is inconsistent with the principles of international law, and is, therefore, not binding upon the court. If the prize court declines to accept his contentions, and if, after such a decision has been upheld on appeal by the Judicial Committee of his Majesty's Privy Council, the Government of the United States of America consider that there is serious ground for holding that the decision is incorrect and infringes the rights of their citizens, it is open to them to claim that it should be subjected to review by an international tribunal.

7. This principle, that the decisions of the national prize courts may properly be subjected to international review, was conceded by Great Britain in Article VII of the Jay treaty of 1793 and by the United States of America under the Treaty of Washington of 1871. Your Excellency will no doubt remember that certain cases (collectively known as the "Matamoros cases") were submitted to the commission established under Articles XII-XVII of the Treaty of Washington. In each of these cases proceedings in prize had been instituted in the prize courts of the United States, and in each case the judgment of the Supreme Court, the court of last resort in cases of prizes, had been obtained. The United States filed a demurrer in these cases, alleging that, as they had been heard by the prize courts of the United States of original and appellate jurisdiction, the decision of the appellate court was final, and no claim based upon it could be made before the commission. The demurrer was unanimously overruled and the cases heard, and the agent of the United States, in his reports of the proceedings of the commission, stated that he, personally, maintained no doubt of the jurisdiction of the commission as an international tribunal to review the decisions of the prize courts of the United States where the parties alleging themselves aggrieved had prosecuted their claims by appeals to the court of last resort; as this jurisdiction, however, had been sometimes questioned, he deemed it desirable that a formal adjudication by the commission should be held upon this question.

8. The same principle was accepted both by the United States

Government and his Majesty's Government in 1907 in connection with the proposed establishment of an international prize court, although certain constitutional difficulties have led the United States Government to propose that the right of recourse to the international prize court in connection with a decision of the Supreme Court of the United States should take the form of a direct claim for compensation.

9. It is clear, therefore, that both the United States Government and his Majesty's Government have adopted the principle that the decisions of a national prize court may be open to review if it is held in the prize court and in the Judicial Committee of the Privy Council, on appeal, that the orders and instructions issued by his Majesty's Government in matters relating to prize are in harmony with the principles of international law; and, should the Government of the United States unfortunately feel compelled to maintain a contrary view, his Majesty's Government will be prepared to concert with the United States Government in order to decide upon the best way of applying the above principle to the situation which would then have arisen. I trust, however, that the defense of our action, which I have already communicated to your Excellency, and the willingness of his Majesty's Government (which has been shown in so many instances), to make reasonable concessions to American interests, will prevent the necessity for such action arising.

10. In any case, I trust that the explanations given above will remove the misapprehension under which I cannot but feel the Government of the United States are laboring as to the principles applied by British prize courts in dealing with the cases which come before them.

I have, &c.,

E. GREY.

(*The New York Times*, August 4, 1915.)

**No. 64. British note, July 31, 1915, replying to No. 58.**

*The Secretary of State for Foreign Affairs to the American Ambassador.*

The note which your Excellency addressed to me on the 17th inst. respecting the detention of the cargo of the steamship *Neches* has, I need hardly say, received the careful attention of his Majesty's Government.

The note which I had the honor to send to your Excellency on the 23d instant has already explained the view of his Majesty's Government on the legal aspect of the question, though it was prepared before your Excellency's communication of the 17th had been received, and, pending consideration by the Government of the United States of the views and arguments set forth in the British note of the 23d, it is unnecessary for me to say more on the question of right or of law.

There is, however, one general observation that seems relevant to the note from your Excellency's respecting the cargo of the *Neches*.

It is the practice of the German Government, in the waters through which the *Neches* was passing, to sink neutral as well as British merchant vessels, irrespective of the destination of the vessel or origin of the cargo, and without proper regard or provision for the safety of passengers or crews, many of whom have lost their lives in consequence. There can be no question that this action is contrary to the recognized and settled rules of international law, as well as to the principles of humanity.

His Majesty's Government, on the other hand, have adhered to the rule of visit and search, and have observed the obligation to bring into port and submit to a prize court any ships or cargoes with regard to which they think they have a good case for detention or for condemnation as contraband.

His Majesty's Government are not aware, except from the published correspondence between the United States and Germany, to what extent reparation has been claimed from Germany by neutrals for loss of ships, lives, and cargoes, nor how far these acts have been the subject even of protest by the neutral Governments concerned.

While those acts of the German Government continue, it seems neither reasonable nor just that his Majesty's Government should be pressed to abandon the rights claimed in the British note of the 23d and to allow goods from Germany to pass freely through waters effectively patrolled by British ships of war.

If, however, it be alleged that, in particular cases and special circumstances, hardships may be inflicted on citizens of neutral countries, his Majesty's Government are ready in such cases to examine the facts in a spirit of consideration for the interest of neutrals, and in this spirit they are prepared to deal with the cargo of the *Neches*, to which your Excellency has called attention, if it is held that the particular circumstances of this case fall within this category.

[I have, &c.,

E. GREY.]

(*The New York Times*, August 4, 1915.)

**No. 65. Fourth American note, August 16, 1915, in regard to the "William P. Frye."\***

*The Secretary of State to the American Ambassador at Berlin.*

You are instructed to present the following note to the German Minister for Foreign Affairs:

Under instructions from my Government, I have the honor to inform your Excellency, in reply to your note of July 30 in regard to the claim for reparation for the sinking of the *William P. Frye*, that the Government of the United States learns with regret that the objections urged by it against the submission of this case to the prize court for decision have not commended themselves to the Imperial German Government, and it equally regrets that the reasons presented by the Imperial German Government for submitting this case to the prize court have failed to remove the objections of the Government of the United States to the adoption of that course. As this disagreement has been reached after the full presentation of the views of both Governments in our previous correspondence, a further exchange of views on the questions in dispute would doubtless be unprofitable, and the Government of the United States therefore welcomes your Excellency's suggestion that some other way should be found for settling this case.

The two methods of settlement proposed as alternative suggestions in your Excellency's note have been given careful consideration, and it is believed that if they can be combined so that they may both be adopted they will furnish a satisfactory basis for the solution of the questions at issue.

The Government of the United States has already expressed its desire that the question of the amount of indemnity to be paid by the

\* See Nos. 37, 39, 43, 52, 55, 62.

Imperial German Government under its admitted liability for the losses of the owners and Captain on account of the destruction of the *Frye* should be settled by diplomatic negotiation, and it entirely concurs with the suggestion of the Imperial German Government that the simplest way would be to agree, as proposed in your note, "that each of the two Governments designate an expert and that the two experts jointly fix the amount of indemnity for the vessel and any American property which may have been sunk with her," to be paid by the Imperial German Government when ascertained as stated in your note. It is assumed that the arrangement will include some provision for calling in an umpire in case the experts fail to agree.

The Government of the United States notes that your suggestion is made with the express reservation that a payment under this arrangement would not constitute an admission that American treaty rights had been violated, but would be regarded by the Imperial German Government merely as fulfilling a duty or policy founded on existing treaty stipulations. A payment made on this understanding would be entirely acceptable to the Government of the United States, provided that the acceptance of such payment should likewise be understood to be without prejudice to the contention of the Government of the United States that the sinking of the *Frye* was without legal justification, and provided also that an arrangement can be agreed upon for the immediate submission to arbitration of the question of legal justification, in so far as it involves the interpretation of existing treaty stipulations.

There can be no difference of opinion between the two Governments as to the desirability of having this question of the true intent and meaning of their treaty stipulations determined without delay, and to that end the Government of the United States proposes that the alternative suggestion of the Imperial German Government also be adopted, so that this question of treaty interpretation can be submitted forthwith to arbitration, pursuant to Article XXXVIII of The Hague convention for the pacific settlement of international disputes.

In this way both the question of indemnity and the question of treaty interpretation can promptly be settled, and it will be observed that the only change made in the plan proposed by the Imperial German Government is that instead of eliminating either one of its alternative suggestions, they are both given effect, in order that both of the questions under discussion may be dealt with at the same time.

If this proposal proves acceptable to the Imperial German Government, it will be necessary also to determine whether, pending the arbitral award, the Imperial German Government shall govern its naval operations in accordance with its own interpretation, or in accordance with the interpretation maintained by the United States, as to the obligations imposed by their treaty stipulations, and the Government of the United States would be glad to have an expression of the views of the Imperial German Government on this point.

LANSING.

(*The New York Times*, August 18, 1915.)

**No. 66. British proclamation, August 21, 1915, declaring cotton contraband of war.\***

Now, therefore, we do hereby declare, by and with the advice of our Privy Council, that, during the continuance of the war, or until we

\* See Nos. 6, 10, 31.

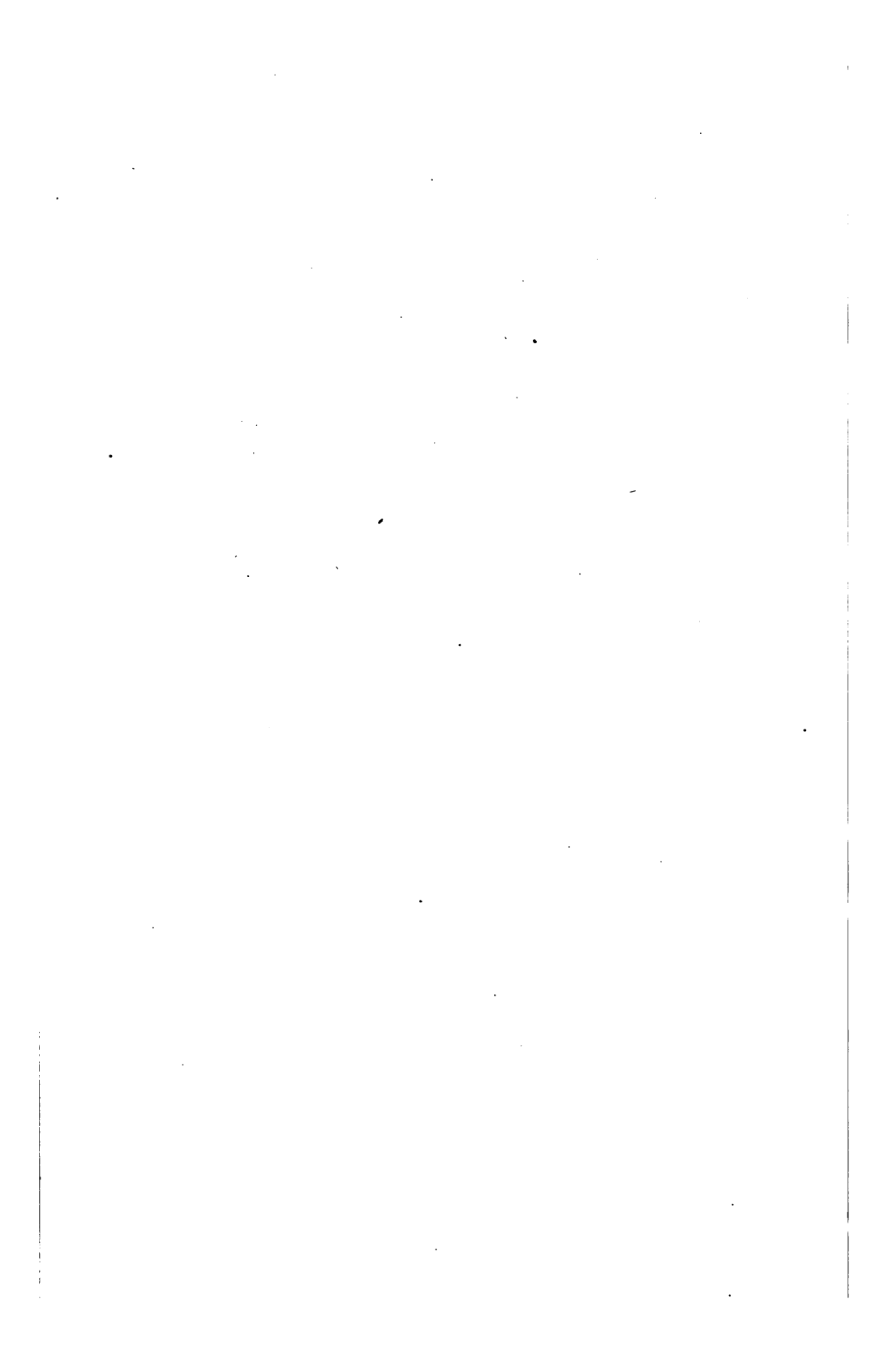
do give further public notice, the following articles will be treated as absolutely contraband, in addition to those set out in our royal proclamation aforementioned: Raw cotton, cotton linters, cotton waste, and cotton yarn.

And we do hereby further declare that this our royal proclamation shall take effect from the date of its publication in the *London Gazette*.

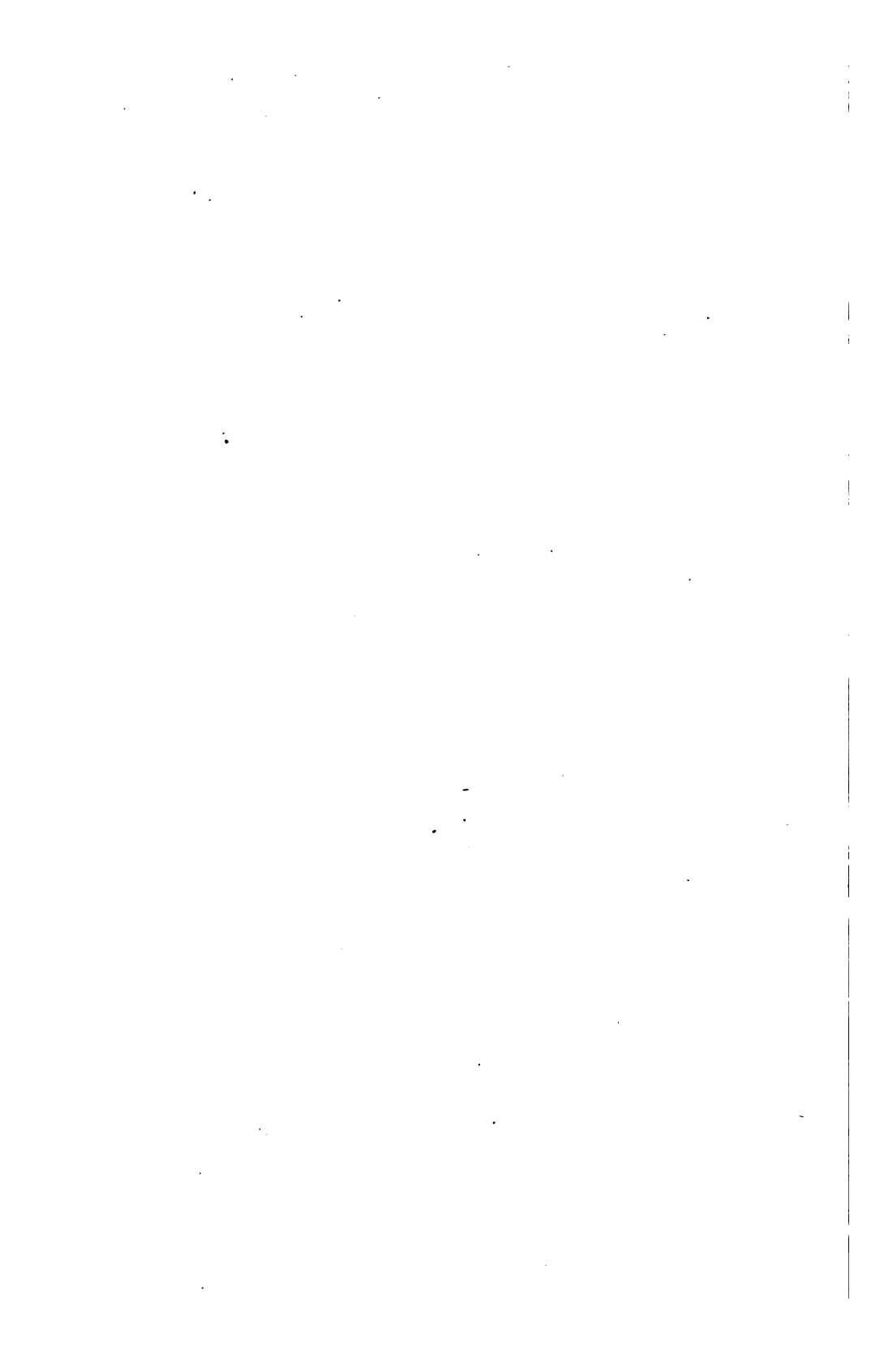
*(The New York Times, August 22, 1915.)*

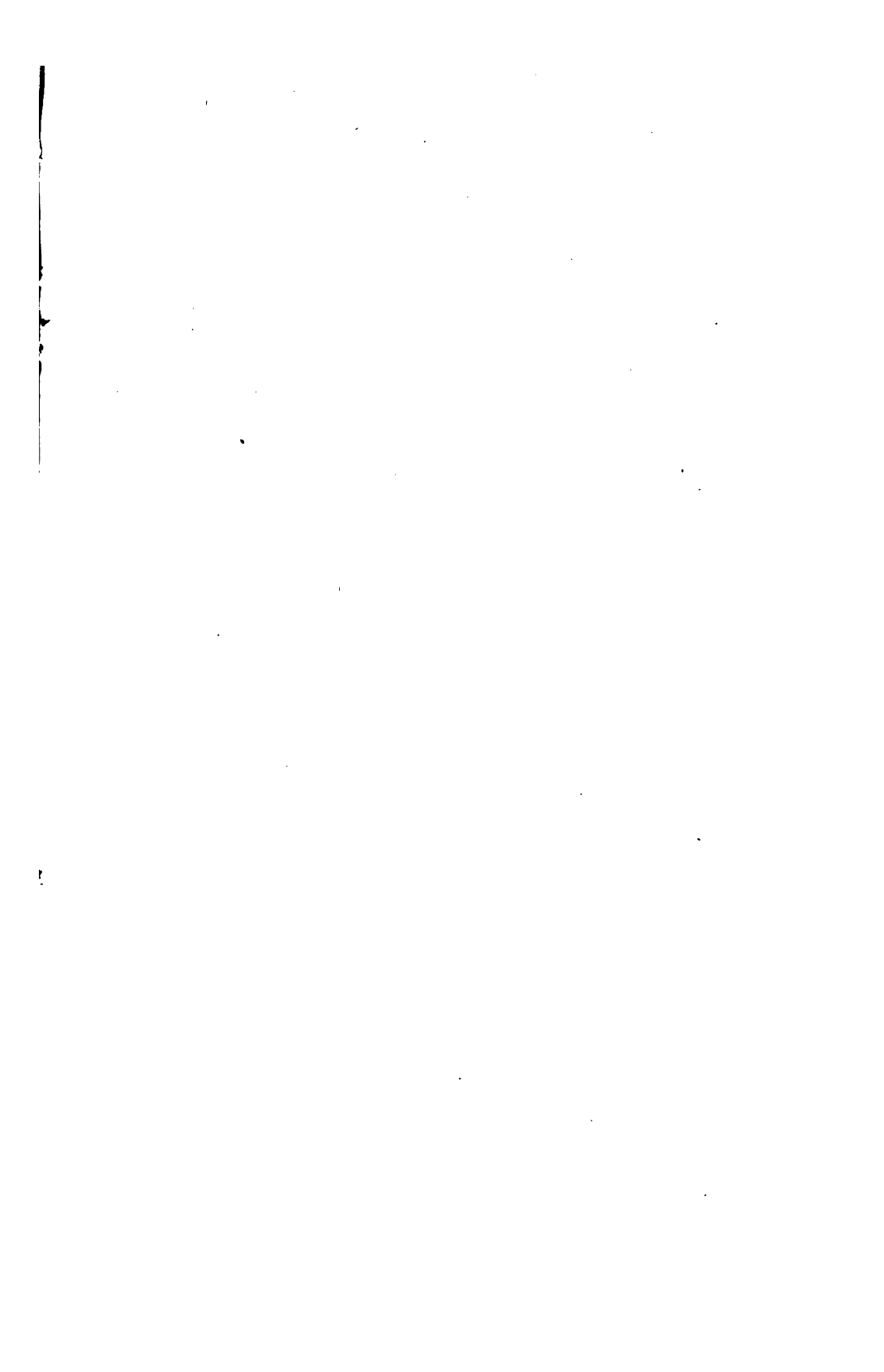
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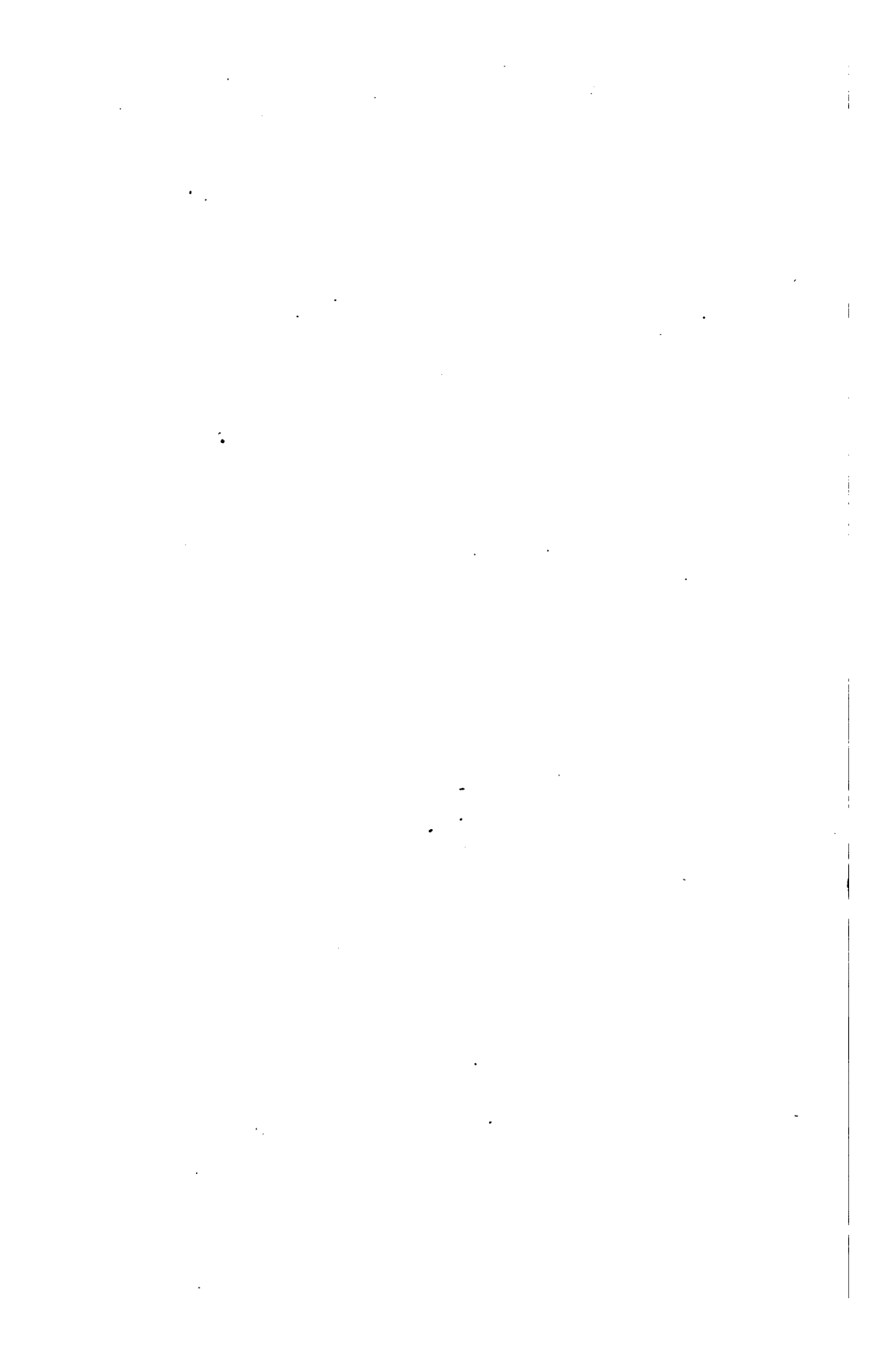




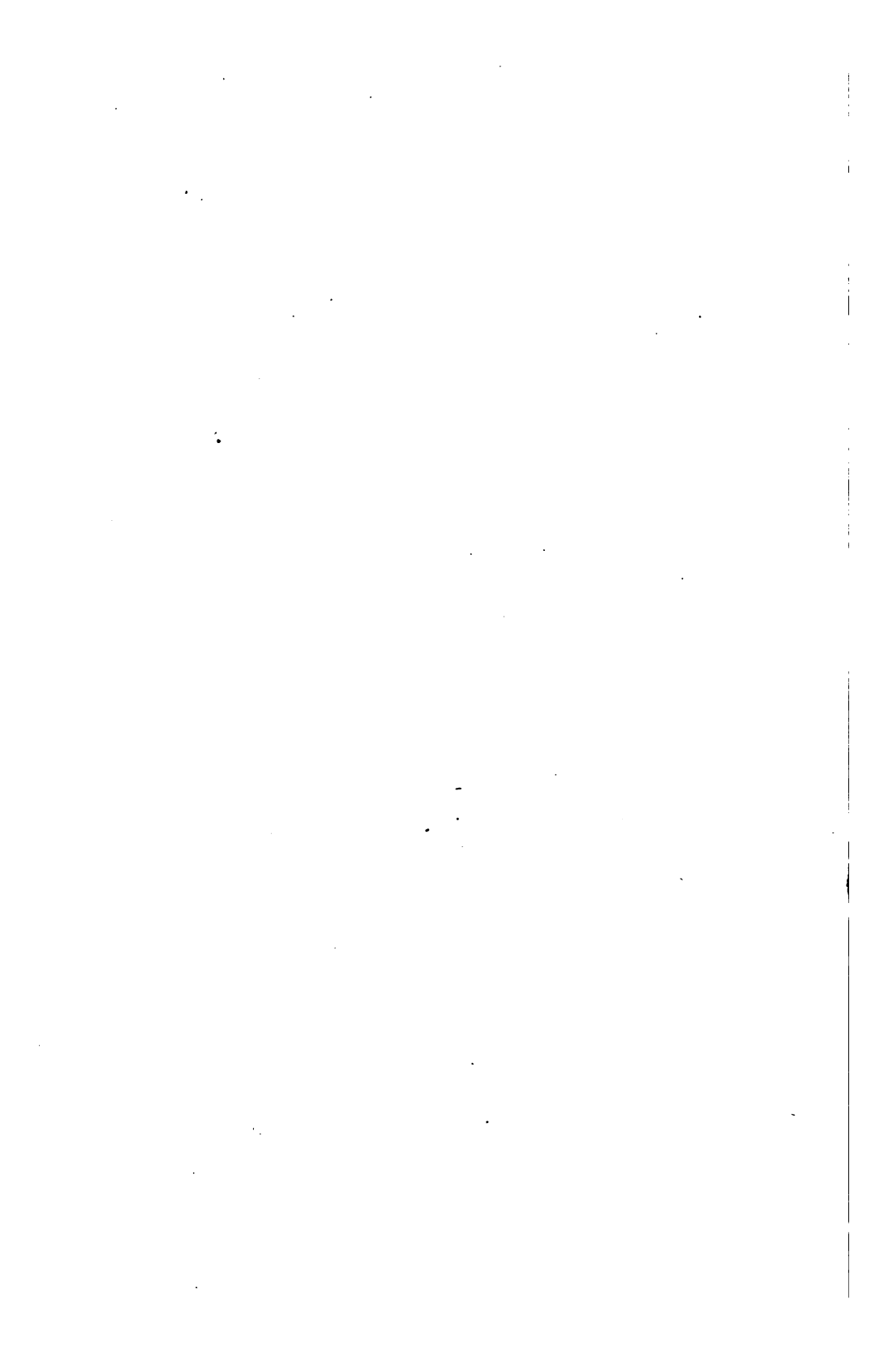






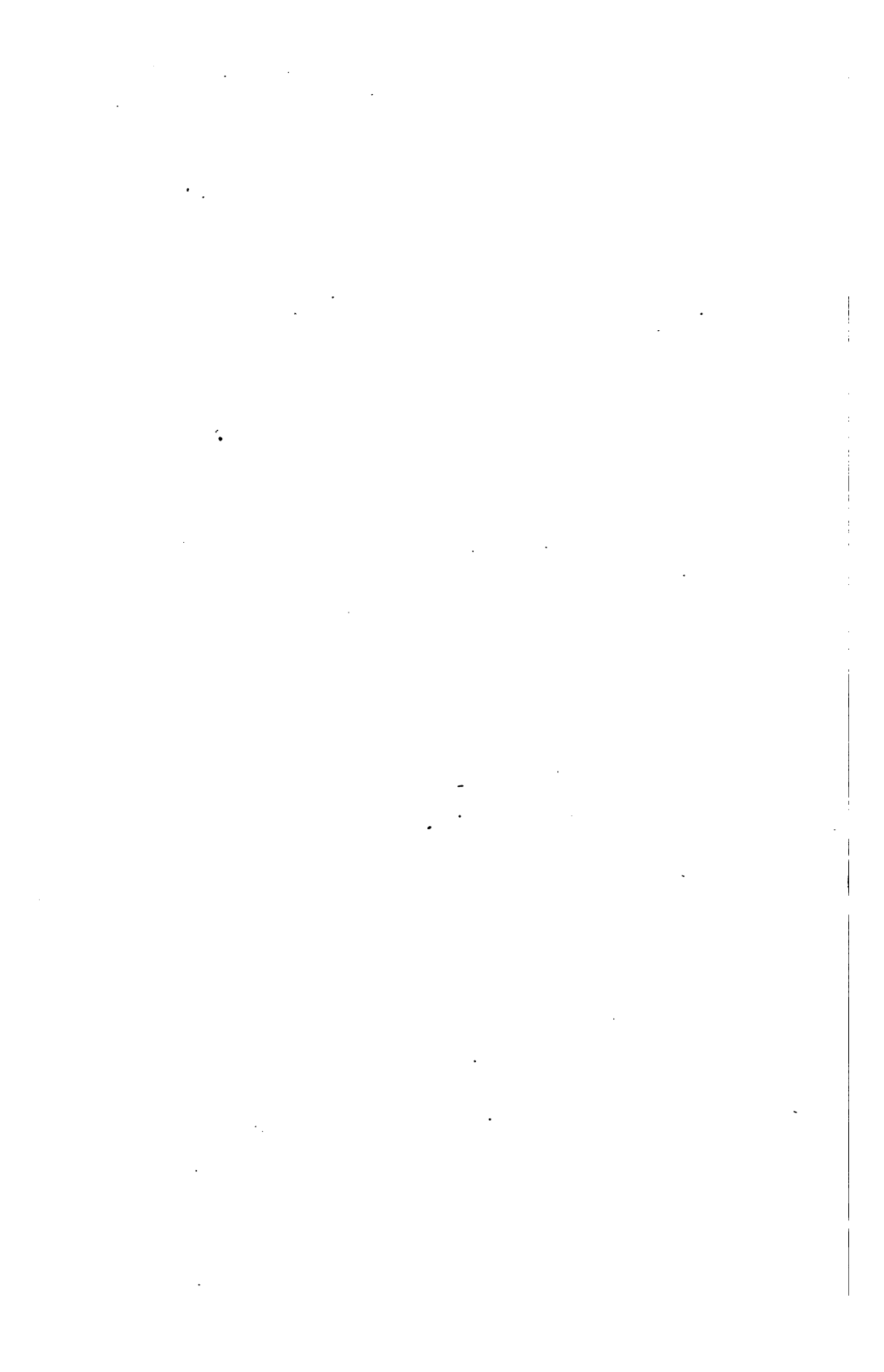


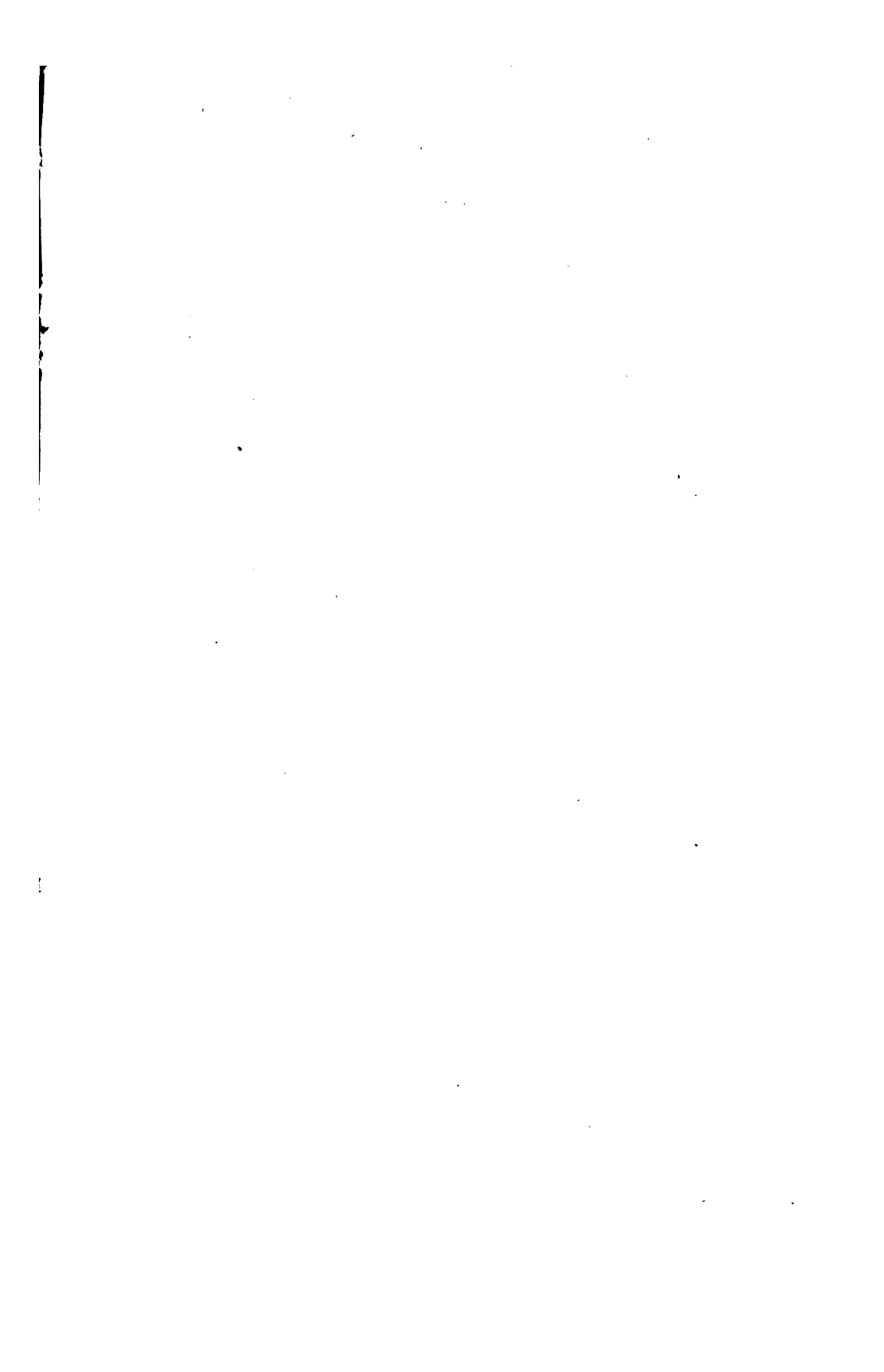
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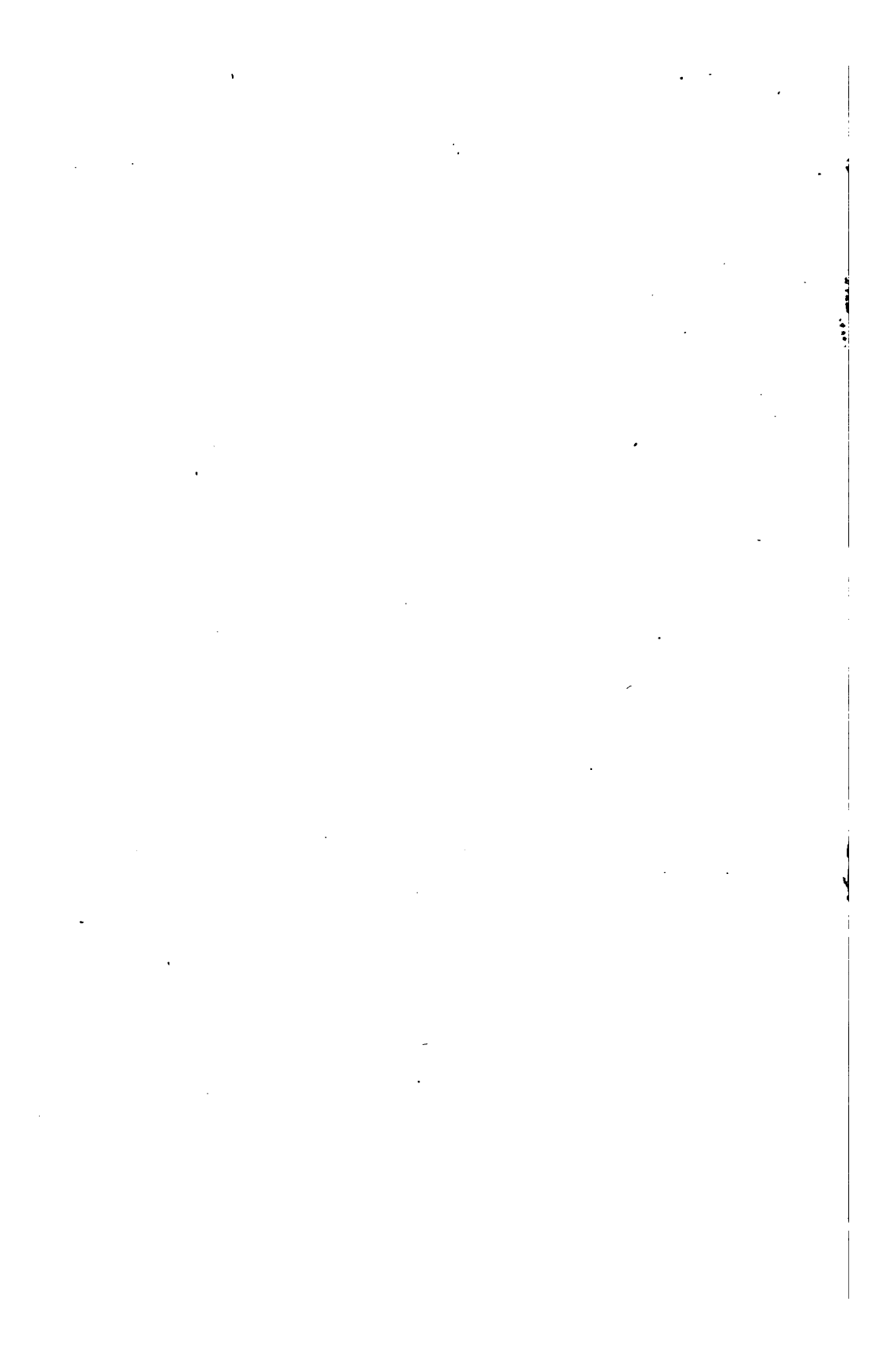


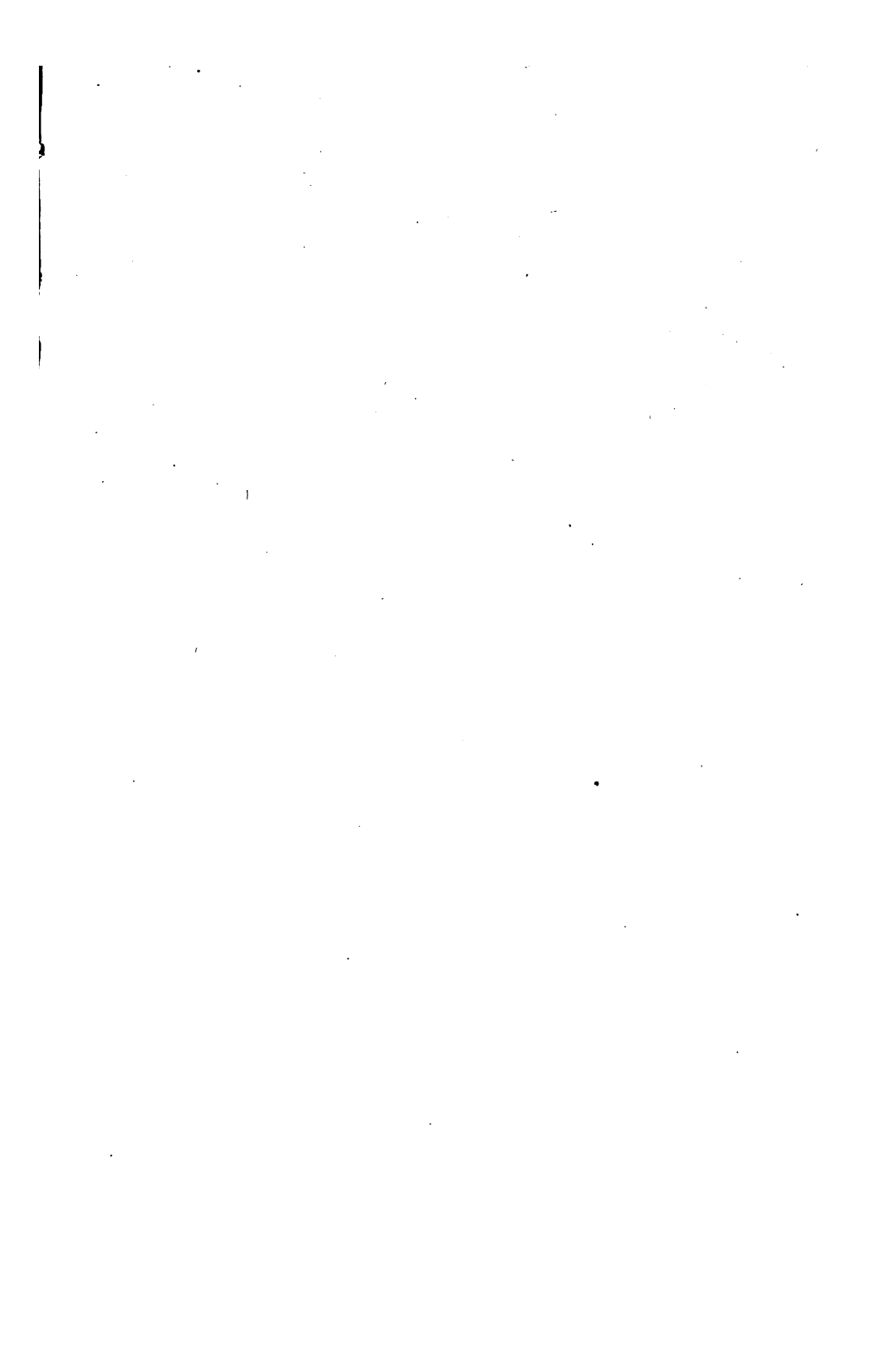
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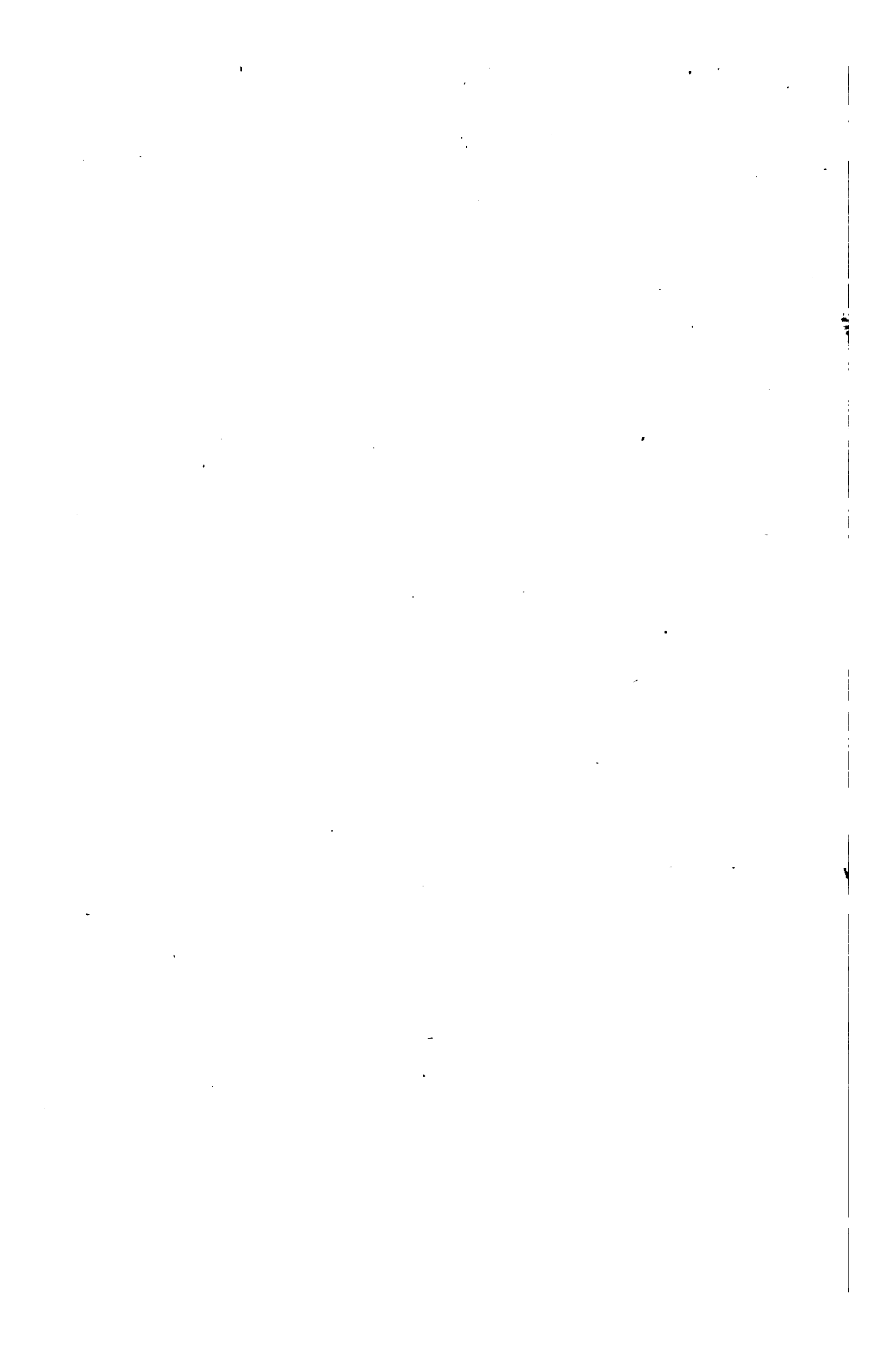


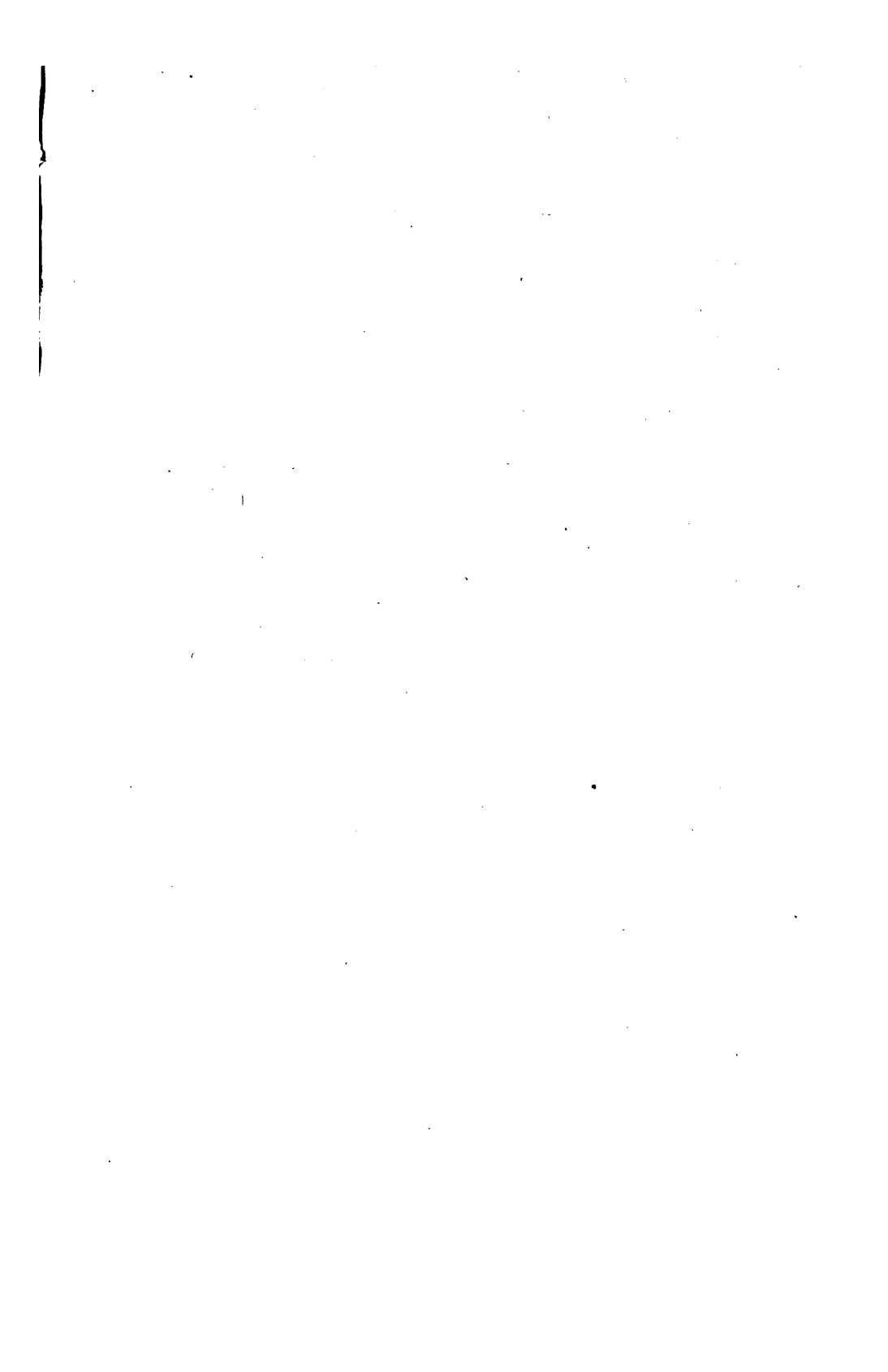


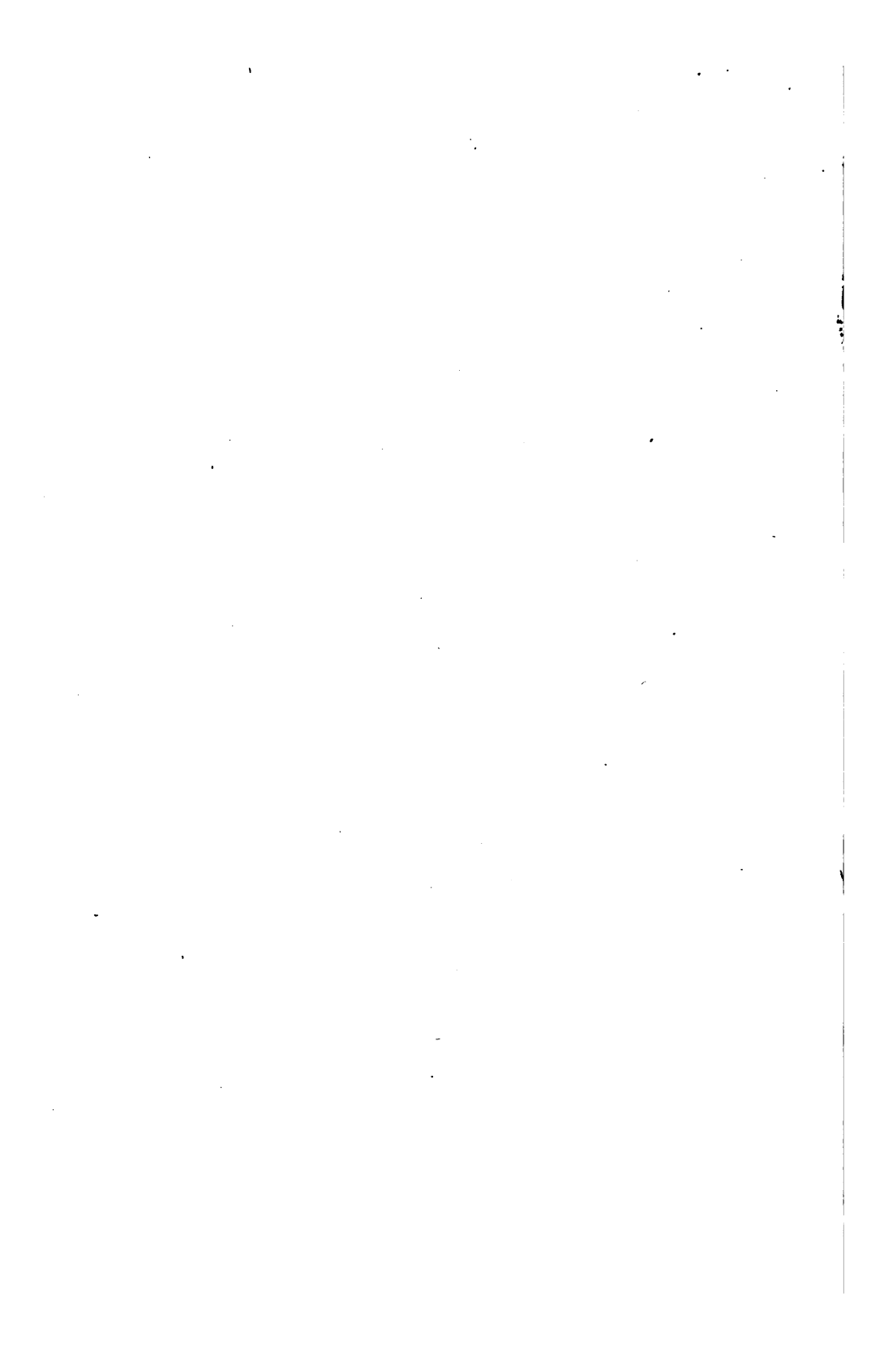


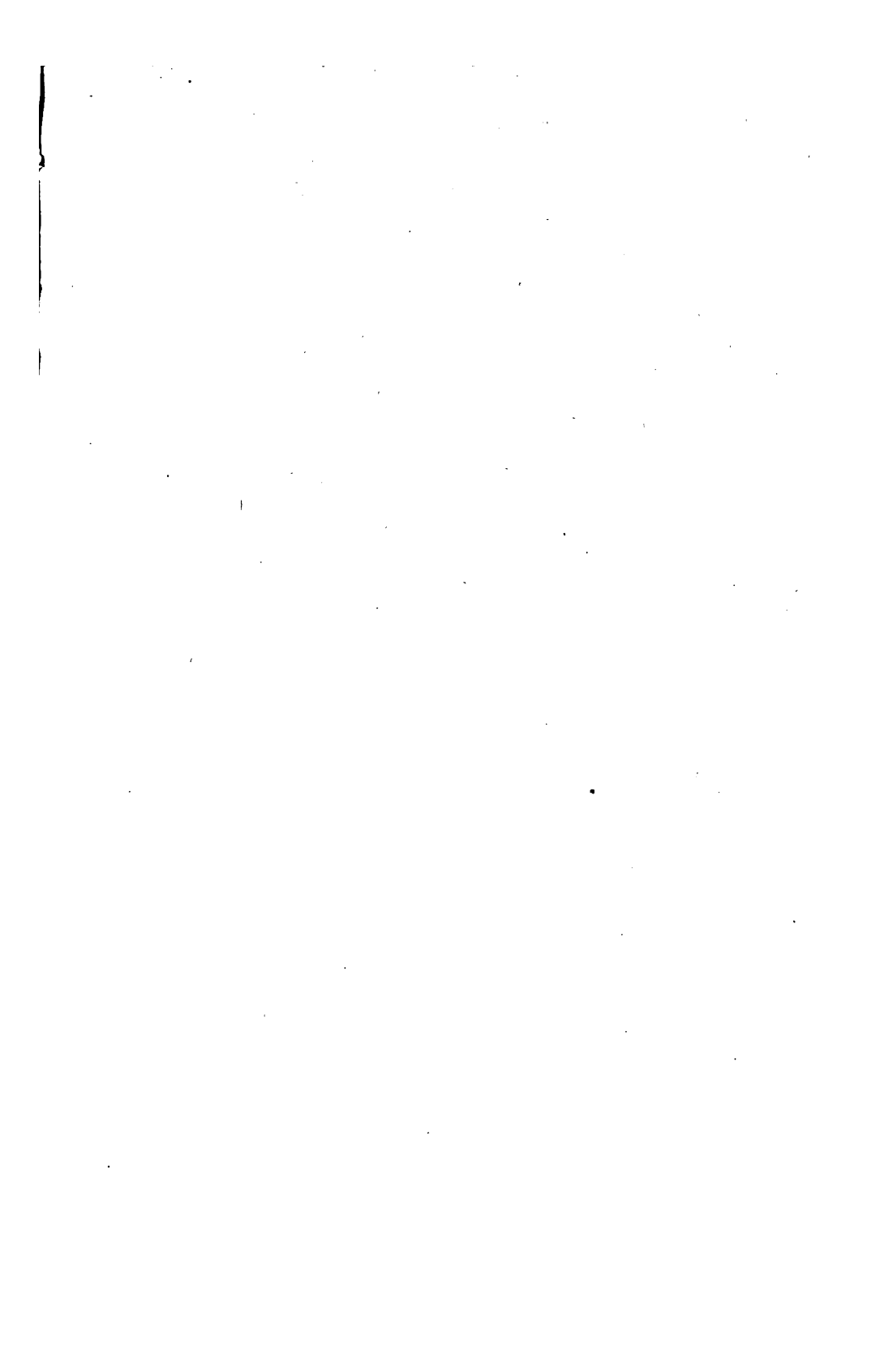




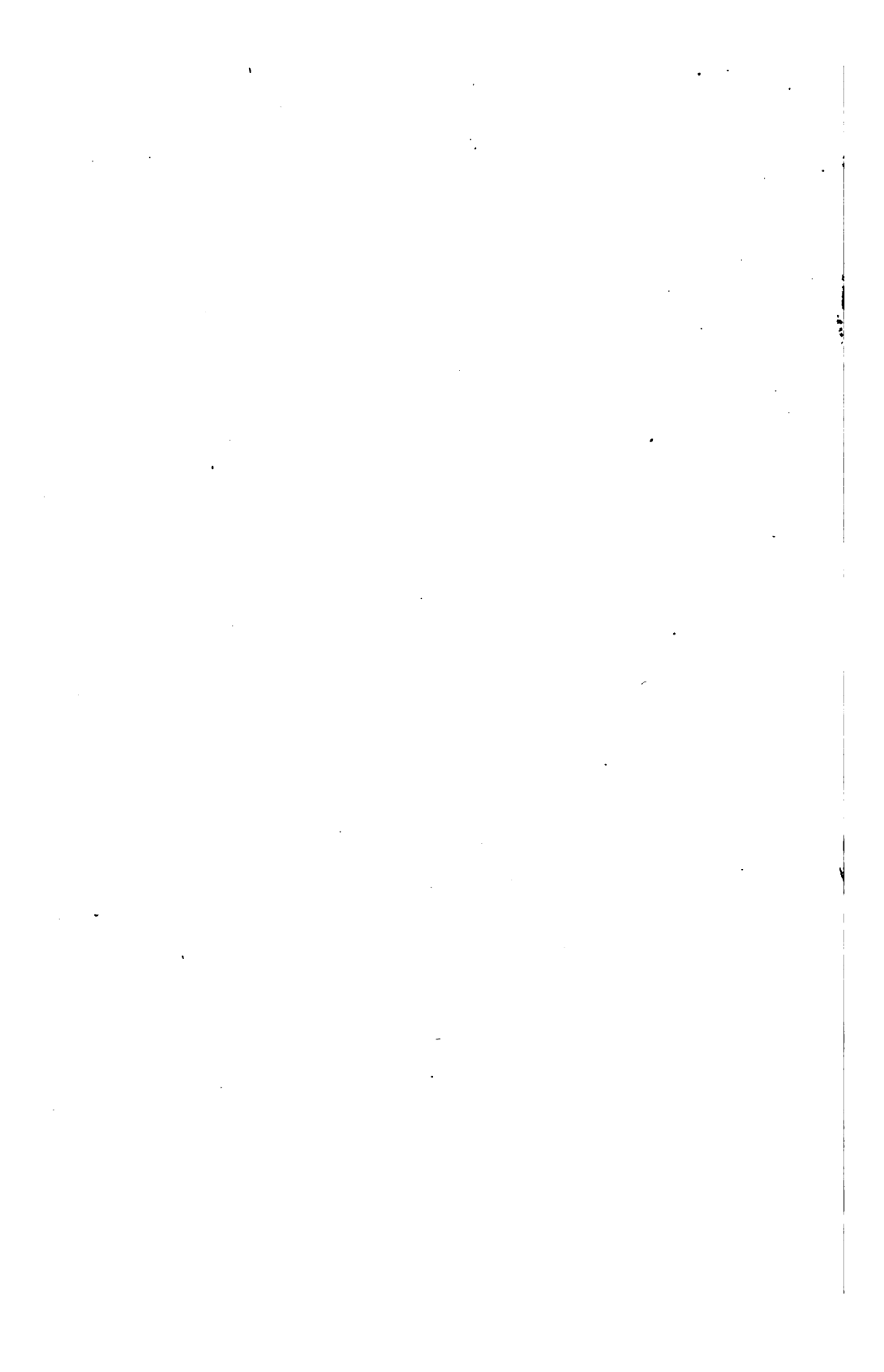


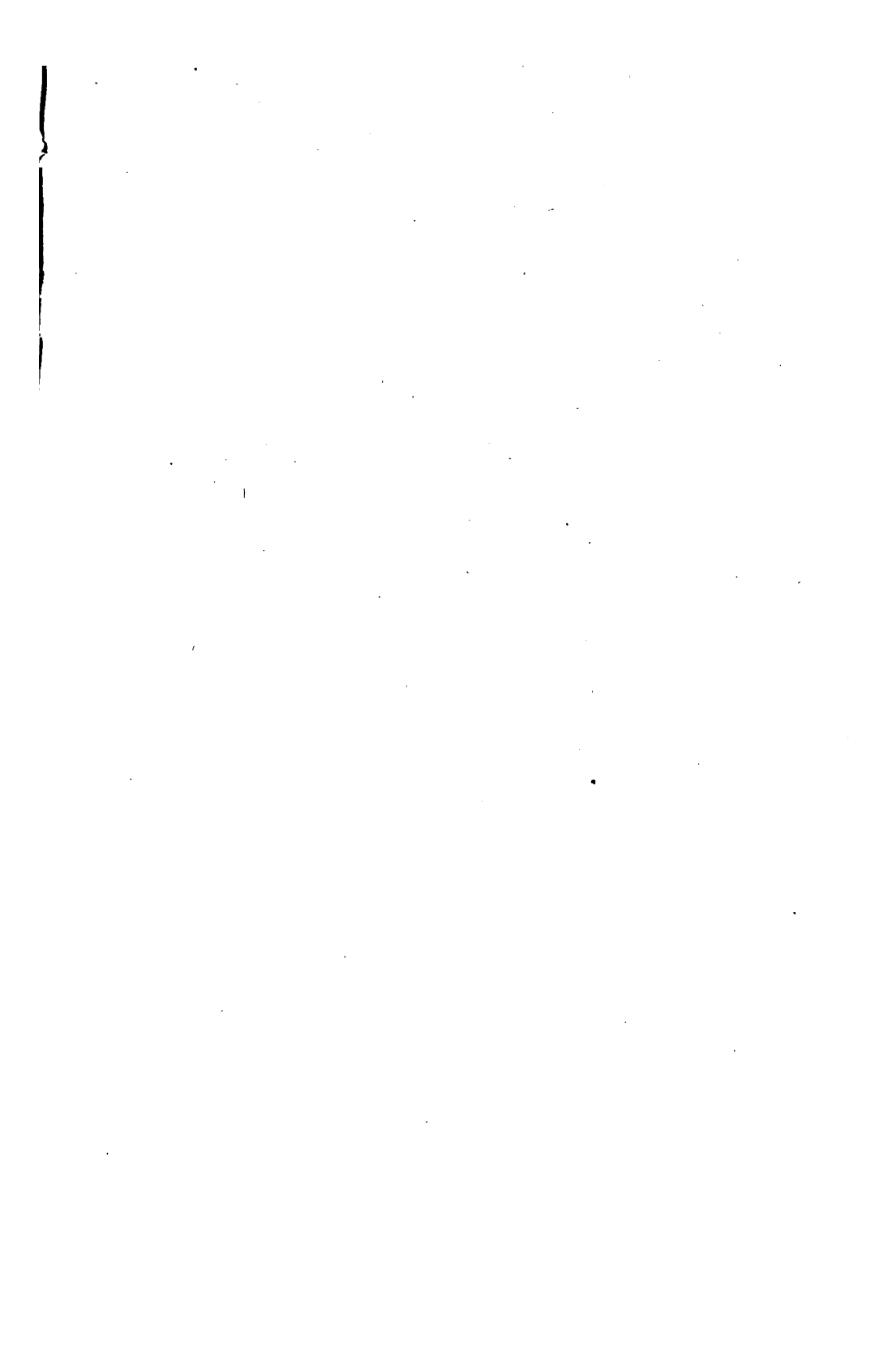












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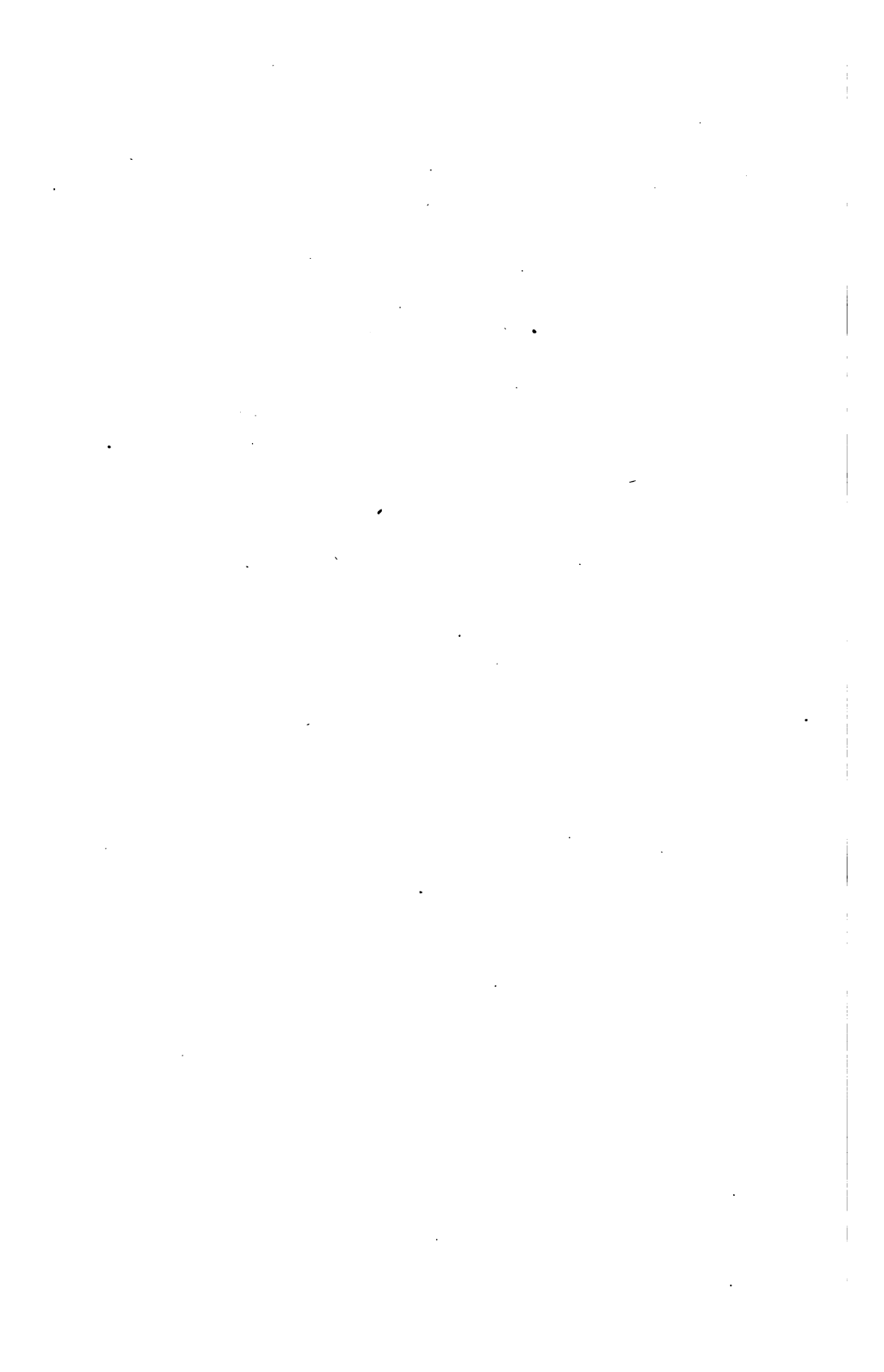
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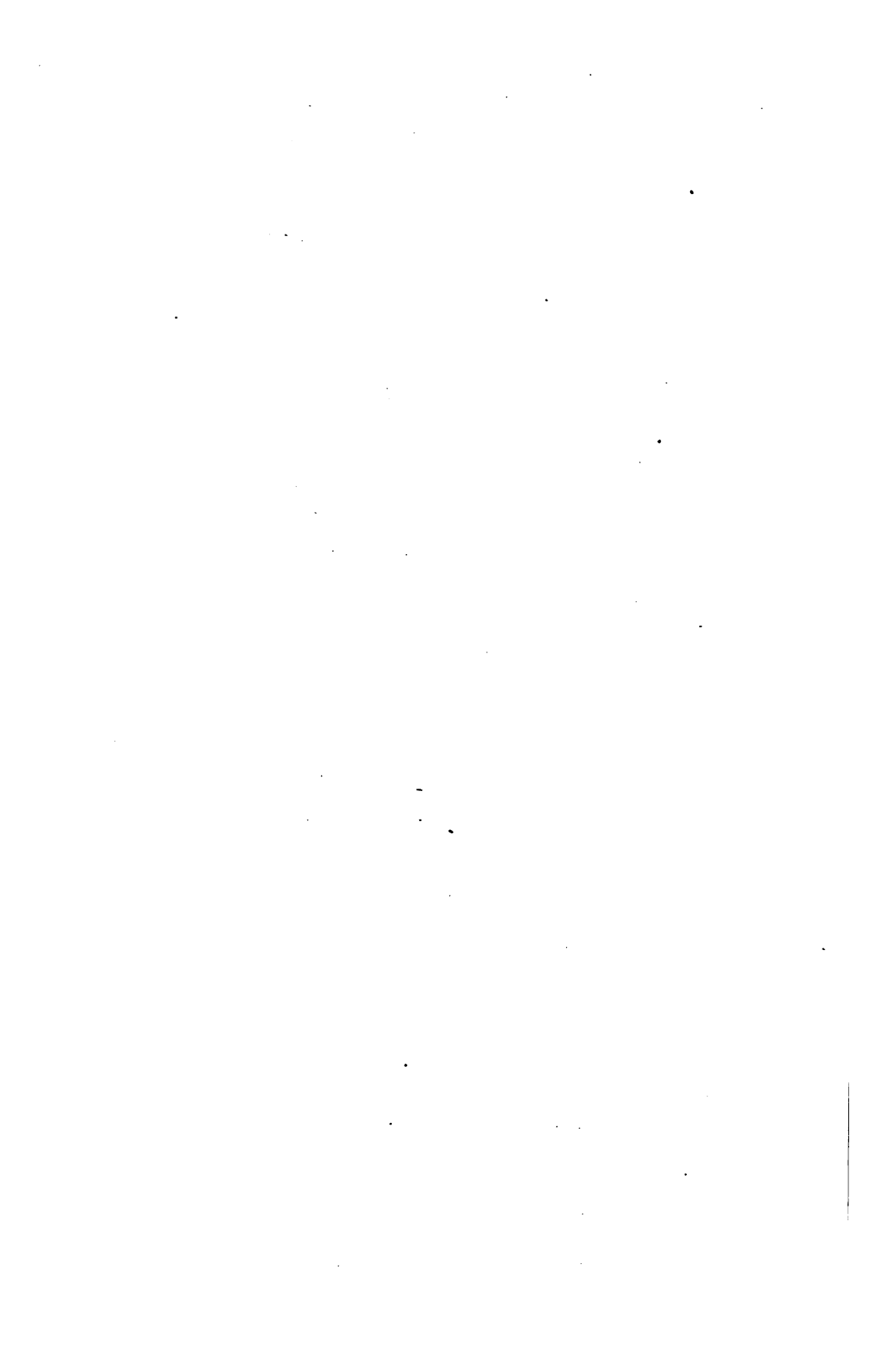
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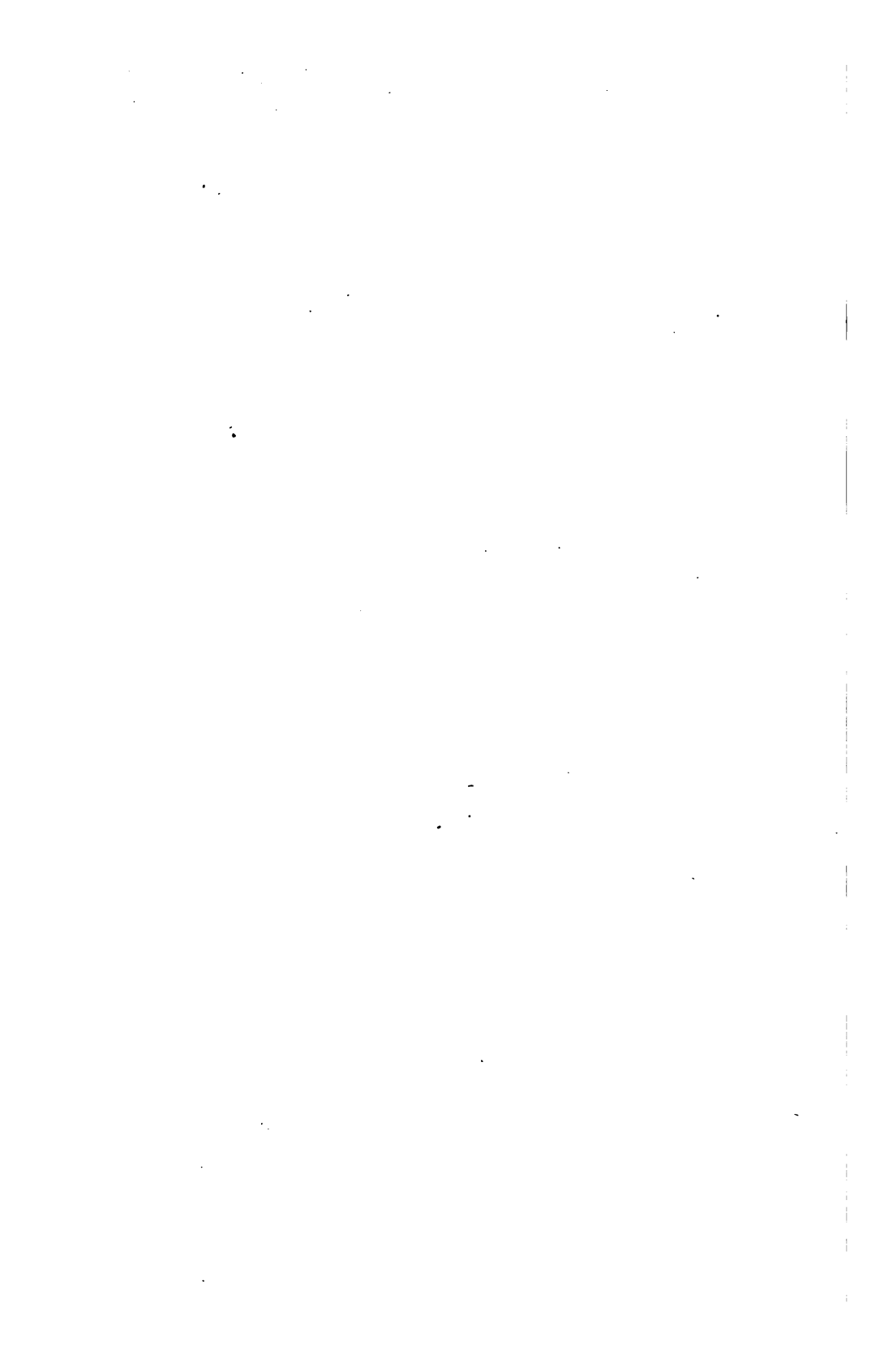
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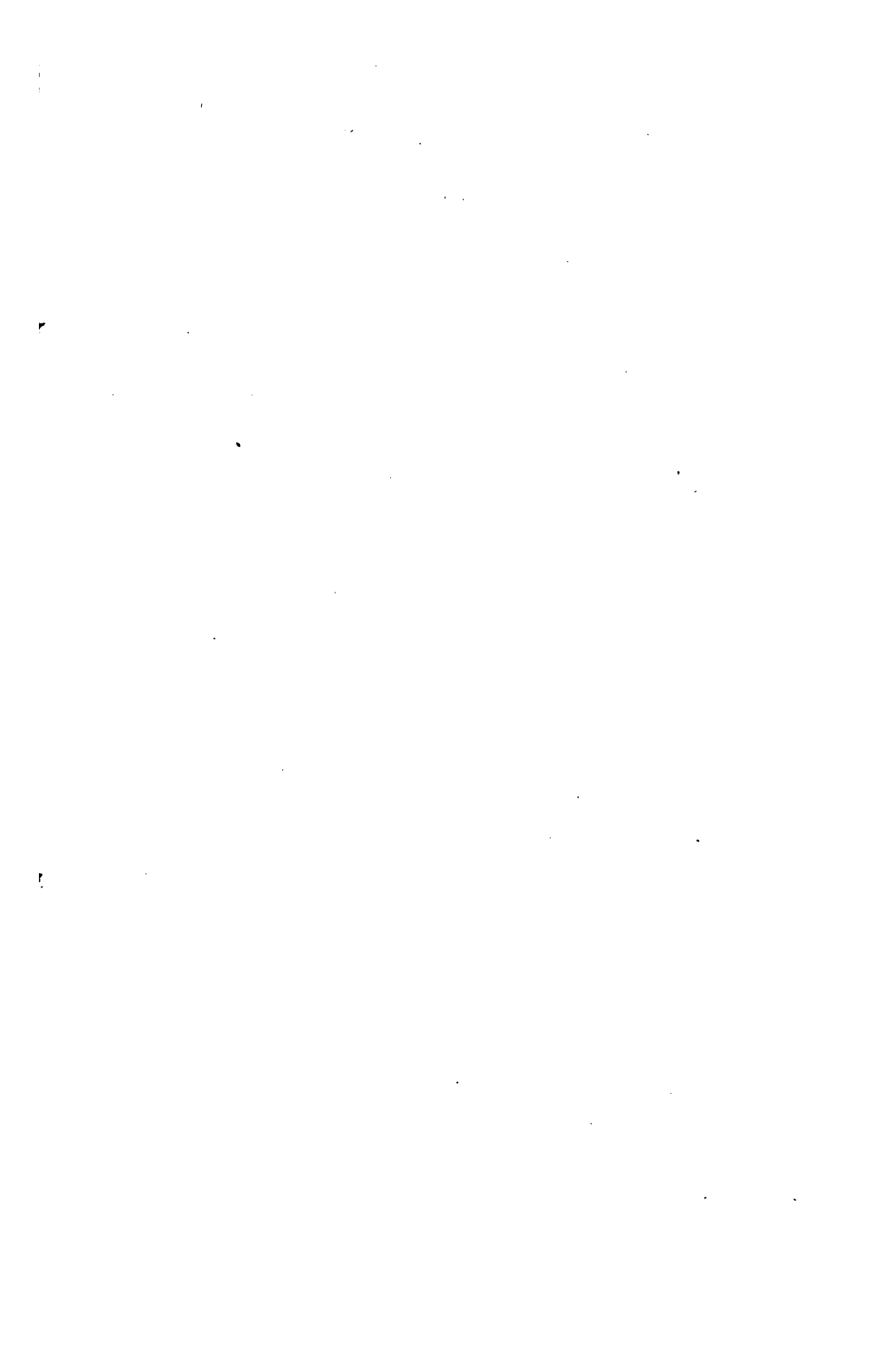
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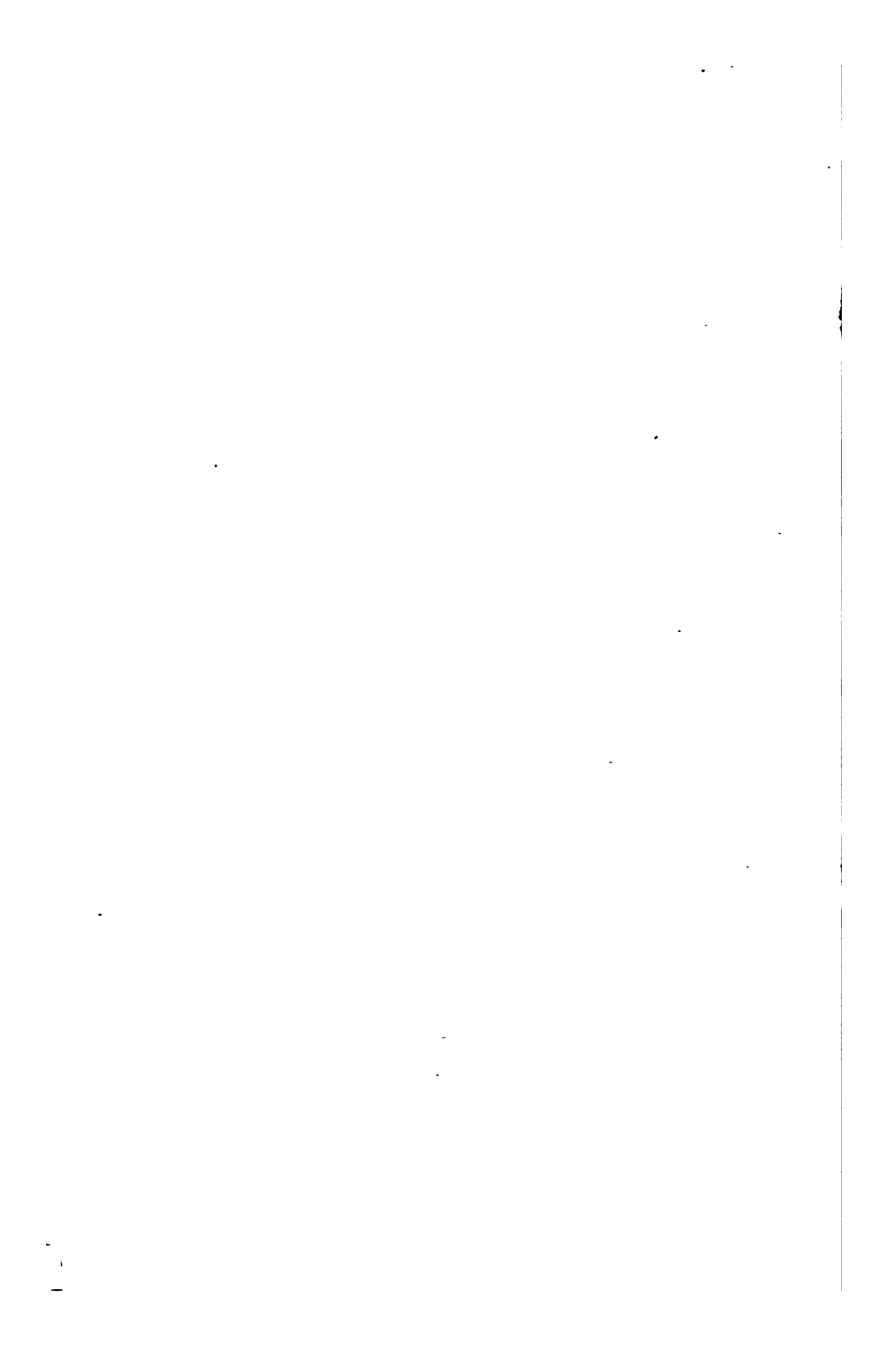










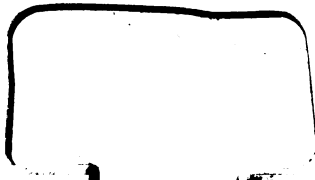






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